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14 **Pro Hac Vice* application forthcoming

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**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WHITEWATER DRAW NATURAL
RESOURCE CONSERVATION
DISTRICT, HEREFORD NATURAL
RESOURCE CONSERVATION,
DISTRICT, ARIZONA ASSOCIATION
OF CONSERVATION DISTRICTS,
CALIFORNIANS FOR POPULATION
STABILIZATION, SCIENTISTS AND
ENVIRONMENTALISTS FOR
POPULATION STABILIZATION,
NEW MEXICO CATTLEGROWERS'
ASSOCIATION, GLEN COLTON,
FLORIDIANS FOR SUSTAINABLE
POPULATION, RALPH POPE

Plaintiffs,

vs.

Case No.: '16CV2583 L BLM

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 JEH JOHNSON, IN HIS OFFICIAL
2 CAPACITY AS SECRETARY OF
3 THE DEPARTMENT OF HOMELAND
4 SECURITY, and THE DEPARTMENT
5 OF HOMELAND SECURITY

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7 Defendants.

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9 **Preliminary Statement**

10 1. This case addresses a class of discretionary actions taken by the
11 Department of Homeland Security (“DHS”) and DHS Secretary Jeh Johnson
12 (together, DHS and DHS Secretary are referred to as “DHS”). These myriad
13 actions concern the entry and settlement of multitudinous foreign nationals into
14 the United States. Thirty-three of these actions are itemized and summarized in ¶
15 53 and attached hereto in Ex. 1. Like its predecessor agency, the Immigration and
16 Naturalization Service (“INS”), DHS has turned a blind eye regarding the
17 environmental impacts, including the cumulative impacts, of its actions
18 concerning foreign nationals who enter and settle into the United States pursuant
19 to the agency’s discretionary actions. The resulting environmental impacts from
20 these actions are significant and an analysis of these impacts by DHS is required
21 pursuant to the National Environmental Policy Act (“NEPA”), *see* 42 U.S.C. §
22 4331 *et seq.* (2016), and its implementing regulations. But DHS, like INS before
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1 it, undertakes no such NEPA review. Accordingly, DHS is acting in contravention
2 of its legal obligations.

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4 2. The core purpose of NEPA is to ensure that, before a federal agency
5 undertakes a federal action, its decision makers consider the range of potential
6 environmental impacts the action may have on the environment. NEPA embodies
7 the nation's policy of ensuring that decisions affecting the human environment are
8 made with eyes wide open and in full view of the public so that all stakeholders
9 may understand the implications of federal actions on the natural resources that
10 we all depend on, in one way or another. NEPA "help[s] public officials make
11 decisions that are based on understanding of environmental consequences, and
12 take actions that protect, restore, and enhance the environment." 40 C.F.R. §
13 1500.1 (2016) (Council on Environmental Quality ("CEQ") regulations). DHS is
14 woefully deficient in carrying forth this mandate.

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16 3. After DHS was established in 2003, it adopted its own NEPA
17 procedures, which were finalized in 2014. But these new procedures continue to
18 perpetuate its blindspot to the manifold environmental consequences of its actions
19 concerning the entry and settlement of mass numbers of people into the U.S.
20 Moreover, in recent years DHS has, with increasing frequency, undertaken
21 discretionary actions on a greater scale to allow such entry and settlement of a
22 myriad of foreign nationals into the United States. These frequent, large scale,
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1 related actions by DHS result in significant environmental impacts throughout the
2 entire United States. Nonetheless, DHS continues to fail to undertake NEPA
3 review, in direct contravention of its mandate, before commencing such actions.
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5 4. Given DHS's failure, those members of the public (like the Plaintiffs)
6 particularly affected by or interested in such environmental consequences have no
7 opportunity to voice their views before the agency takes action. Not only does
8 DHS take actions of great environmental significance with increasing frequency,
9 it also often does not explain or present to the public in any formal way what it
10 has actually done. In the worst cases, DHS never even publishes its actions, and
11 the public only realizes what has happened at all because of leaks to the media.
12 Meanwhile, the environmental consequences reverberate around the country, with
13 the public largely in the dark about why and how it is happening. The intention of
14 NEPA is to prevent exactly this scenario.
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19 5. In order to establish the scope and magnitude of the environmental
20 impacts at issue, Plaintiffs have undertaken extensive research and retained
21 experts¹ to:
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25 ¹ Plaintiffs retained three experts for this action. Jessica Vaughan, an expert on
26 United States immigration law, policy and practice, produced two reports
27 regarding the discretionary actions of DHS, analyzing them and their specific
28 impacts on the U.S. population and the influx of foreign nationals over the
Southwest border. Her reports are attached hereto in Ex. 2. Steven Camarota,
Ph.D., an expert on the demographic impacts of immigration, produced an expert

1 a) identify and delineate those specific, ongoing discretionary actions that
2 DHS has undertaken concerning the entry and settlement into the United States of
3 multitudinous foreign nationals; and
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5 b) identify and delineate environmental impacts to Plaintiffs resulting from
6 these and past actions, including, but not limited to, the impacts from massive
7 population growth directly attributable to DHS actions and environmental damage
8 along the Southwest border of the United States.
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11 6. Plaintiffs seek to compel DHS to properly comply with NEPA in
12 connection with its agency actions that concern the entry and settlement of
13 multitudinous foreign nationals into the United States. Plaintiffs seek both a
14 declaration from this Court that DHS is violating NEPA and an injunction to
15 require DHS to comply with the law. Further, Plaintiffs assert that, in the course of
16 approving its agency actions concerning the entry and settlement of foreign
17 nationals into the United States, DHS violated its fundamental obligation to engage
18 in well-reasoned, non-arbitrary decision-making under the Administrative
19 Procedure Act, (“APA”). *See* 5 U.S.C. § 701 *et seq.* (2016). In Count I, Plaintiffs
20 assert that the NEPA procedures DHS adopted in 2014 are arbitrary and capricious,
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26 report addressing the impact of immigration upon population growth. His report is
27 attached hereto as Ex. 3. Phil Cafaro, Ph.D., a sustainability expert, produced a
28 report on the environmental impacts of population growth. His report is attached
hereto as Ex. 4.

1 in violation of the APA and NEPA. In Count II, Plaintiffs assert that DHS's failure
2 to initiate NEPA compliance for thirty-three actions relating to the entry and
3 settlement of foreign nationals into the United States violates the APA and NEPA.
4 In Count III, Plaintiffs assert that DHS's failure to prepare a Programmatic
5 Environmental Impact Statement for these thirty-three actions violates the APA
6 and NEPA. Count IV addresses one particular action, a recently adopted DHS rule,
7 that DHS deemed categorically excluded from NEPA review. Plaintiffs assert the
8 application of the categorical exclusion was arbitrary and capricious, in violation
9 of the APA and NEPA. Finally, in Count V, Plaintiffs challenge the NEPA review
10 DHS completed for its June 2, 2014 Action "Response to the Influx of
11 Unaccompanied Alien Children," with violating NEPA and the APA.
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16 **JURISDICTION AND VENUE**

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18 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
19 1331 (federal question jurisdiction), 5 U.S.C. § 701 *et seq.* (APA), 28 U.S.C. §
20 1361 (mandamus) and may issue a declaratory judgment and further relief
21 pursuant to 28 U.S.C. § 2202 (declaratory and injunctive relief). Plaintiffs claim
22 that DHS has not and is not acting in accordance with federal law. *See* 5 U.S.C. §
23 706.
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8. Venue in this judicial district is proper under 28 U.S.C. § 1391(e) because this is an action against an agency of the United States and at least one plaintiff resides in this district.

RELEVANT STATUTES

A. THE NATIONAL ENVIRONMENTAL POLICY ACT

9. NEPA is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. NEPA’s essential purpose is “to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c).

10. NEPA expressly recognizes Congressional concern for “the profound influences of population growth” on “the natural environment[.]” 42 U.S.C. § 4331(a). Through NEPA, Congress directs, in relevant part, that the Federal Government shall:

use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or

1 safety, or other undesirable and unintended
2 consequences;

3 (4) preserve important historic, cultural, and
4 natural aspects of our national heritage, and maintain,
5 wherever possible an environment which supports
6 diversity and variety of individual choice;

7 (5) *achieve a balance between population and*
8 *resource use which will permit high standards of*
9 *living and a wide sharing of life's amenities*

42 U.S.C. § 4331(b) (emphasis added).

10 11. To accomplish its goals, NEPA requires each federal agency to
11 identify and consider the environmental impacts of its proposed federal actions. *See*
12 *generally*, 42 U.S.C. § 4331. Each agency must also consider alternatives and
13 mitigating measures which could avoid or reduce such impacts before
14 implementing federal agency actions that may significantly affect the environment.
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16 To these ends, NEPA establishes, in relevant part:

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18 The Congress authorizes and directs that, to
19 the fullest extent possible: (1) the policies,
20 regulations, and public laws shall be
21 interpreted and administered in accordance
22 with the policies set forth in this chapter, and
23 (2) all agencies of the Federal Government
24 shall--

25 ...

26 (C) include in every recommendation or
27 report on proposals for legislation and other
28 major Federal actions significantly affecting
the quality of the human environment, a
detailed statement by the responsible official
on--

- (i) the environmental impacts of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action, ...
- (v) any irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

42 U.S.C. § 4332.

12. “The phrase ‘to the fullest extent possible’ in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency’s operation expressly prohibits or makes compliance impossible.” 40 C.F.R. § 1500.6 (2016); *see also* 40 C.F.R. § 1507.2 (2016) (Agency capability to comply).

13. NEPA is designed to inject environmental considerations early into a federal agency’s decision-making process in order that the agency can “take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c). NEPA is also intended to engage the public and stakeholders while the agency gathers and solicits relevant, “high quality” information, as well as inform and engage the public in the agency decision-making process. *See* 40 C.F.R. § 1500.1(b); *see also* §§ 1503.1(a)(4) (Inviting comments), 1506.6 (Public involvement) (2016). Because “public involvement” is paramount in the NEPA

1 process, each agency shall “[p]rovide public notice of NEPA-related hearings,
2 public meetings, and the availability of environmental documents so as to inform
3 those persons and agencies who may be interested or affected.” 40 C.F.R. §
4 1506.6(b).
5

6 14. NEPA established the White House Council on Environmental
7 Quality (CEQ), which issues regulations guiding agencies’ compliance with
8 NEPA. *See* 42 U.S.C. § 4341 *et seq.* (2016); 40 C.F.R. § 1500. CEQ regulations
9 clearly define what constitutes agency action and set forth the process for
10 determining whether an action or program significantly affects the quality of the
11 human environment. “Major federal actions” are defined to “include new and
12 continuing activities including projects and programs entirely or partly financed,
13 assisted, conducted, regulated, or approved by federal agencies; new or revised
14 agency rules, regulations, plans, policies, or procedures” 40 C.F.R. §
15 1508.18(a) (2016).
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20 15. CEQ regulations provide that each federal agency shall adopt
21 procedures to ensure that its “decisions are made in accordance with [NEPA’s]
22 policies and procedures” 40 C.F.R. § 1505.1 (2016). Further, agency
23 procedures shall comply with CEQ regulations. *See* 40 C.F.R. § 1507.3(b)(1)
24 (2016). An agency must specifically ensure that its NEPA procedures provide for
25 designating the major decision points for the agency’s principal programs likely to
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1 have a significant effect on the human environment and assuring that the NEPA
 2 process corresponds with them. 40 C.F.R. § 1505.1(b).

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 4 16. Pursuant to NEPA, DHS adopted its “Instruction Manual 023-01-001-
 5 01, Implementation of the National Environmental Policy Act (NEPA)” on
 6 November 6, 2014 (“Instruction Manual” attached hereto as Ex. 5).² The
 7 Instruction Manual “serves as the DHS implementing procedures for NEPA (as
 8 required by 40 C.F.R. §§ 1505.1 and 1507.3) which supplement the CEQ
 9 regulations and therefore must be read in conjunction with them.” *Id.* at III-1. The
 10 Instruction Manual states that NEPA applies to a wide range of DHS activities:

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 14 Generally, NEPA applies to Federal actions that
 15 affect the human environment. Within DHS,
 16 NEPA generally applies to actions to be
 17 undertaken, funded, permitted or otherwise
 18 approved by DHS[,] including activities that
 19 may be wholly initiated within DHS, executed
 20 by DHS under the direction of Congress, or
 21 proposed by persons or organizations outside of
 22 DHS that require approval funding, a license, or
 23 a permit from DHS.

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² *Instruction Manual 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act (NEPA)*, Department of Homeland Security (Nov. 6, 2014), https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508compliantversion.pdf.

1 17. Pursuant to 42 U.S.C. § 4332(C) (2016), each agency is required to
2 prepare an “Environmental Impact Statement” (“EIS”) for each “major federal
3 action[] significantly affecting the quality of the human environment”
4

5 18. CEQ regulations provide for the preparation of a document known as
6 an Environmental Assessment (“EA”) to enable an agency to determine whether a
7 particular action may have a significant impact on the quality of the human
8 environment and thus require preparation of an EIS. 40 C.F.R. § 1501.4 (2016).
9

10 19. An EA or EIS must also discuss and analyze alternatives to a
11 proposed program or project--including a “no-action” alternative, which may have
12 less environmental impact than the proposed action, as well as mitigation measures
13 in relation to potential environmental impacts. *See* 40 C.F.R. §§ 1502.14, 1508.9,
14 1502.16 (2016).
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18 20. CEQ regulations provide that agency actions that are “related to each
19 other closely enough to be, in effect, a single course of action shall be evaluated in
20 a single impact statement.” 40 C.F.R. § 1502.4(a) (2016). In such actions an EIS:
21

22 may be prepared, and are sometimes required, for
23 broad Federal actions such as the adoption of new
24 agency programs or regulations (§ 1508.18). Agencies
25 shall prepare statements on broad actions so that they
26 are relevant to policy and are timed to coincide with
27 meaningful points in agency planning and
28 decisionmaking.

1 40 C.F.R. § 1502.4(b). Such actions “have relevant similarities, such as common
 2 timing, impacts, alternatives, methods of implementation, media, or subject
 3 matter.” 40 C.F.R. § 1502.4(c)(2).
 4

5 21. In preparing an EA or EIS, an agency must consider direct, indirect,
 6 and cumulative effects. *See* 40 C.F.R. §§ 1502.16, 1508.8, 1508.9, 1508.27 (2016).
 7

8 Under NEPA, “effects” and “impacts” are synonymous and include:

9 ecological (such as the effects on natural resources
 10 and on the components, structures, and functioning of
 11 affected ecosystems), aesthetic, historic, cultural,
 12 economic, social, or health, whether direct, indirect or
 13 cumulative. Effects may also include those resulting
 14 from actions which may have both beneficial and
 detrimental effects

15 40 C.F.R. § 1508.8(b).
 16

17 22. “Cumulative impact” is defined as:

18 the impact on the environment which results from the
 19 incremental impact of a project when added to other
 20 past, present, and reasonably foreseeable future
 21 actions regardless of what agency (Federal or non-
 22 Federal) or person undertakes such other actions.
 23 Cumulative impacts can result from individually
 24 minor but collectively significant actions taking place
 over a period of time.

25 40 C.F.R. § 1508.7. “Indirect effects” are defined as those impacts that:

26 are caused by the action and are later in time or farther
 27 removed in distance, but are still reasonably
 28 foreseeable. Indirect effects may include growth

inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

40 C.F.R. § 1508.8(b).

23. CEQ regulations authorize agencies to exempt agency certain actions from environmental review through the use of “categorical exclusions.” 40 C.F.R. § 1508.4 (2016). CEQ defines a categorical exclusion as “a category of actions which do not individually or cumulatively have a significant effect on the human environment.” *Id.*

24. For those federal actions that are not categorically excluded and are, following completion of an EA, determined not to have “a significant impact on the human environment” and thus do not require preparation of an EIS, the agency issues a “finding of no significant impact” (“FONSI”). 40 C.F.R. § 1508.13 (2016).

B. THE ADMINISTRATIVE PROCEDURE ACT

25. The APA provides for judicial review of federal agency actions. *See* 5 U.S.C. § 701 *et seq.* Under the APA, a reviewing court must “hold unlawful and set aside agency action, findings, and conclusions” found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]” 5 U.S.C. § 706(2)(A) (2016). Accordingly, a federal agency must take a hard look at the consequences of its actions. It must examine the relevant data and articulate a

satisfactory explanation for its action, including “a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of the U.S. Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). An agency must explain in an explicit and rational manner how its decision is based upon and complies with the relevant factors specified in the controlling statutory provision(s), together with applicable agency regulations. *See id.* at 42-43. A reviewing court may set aside, as arbitrary and capricious, agency factual findings and conclusions found to be unsupported by substantial record evidence. 5 U.S.C. § 706(2).

PARTIES

A. PLAINTIFFS

26. The Whitewater Draw Natural Resource Conservation District (“WWDNRCD”) and the Hereford Natural Resource Conservation District (“HNRCD”) are part of the state of Arizona’s Natural Resource Conservation District program that was established in response to the 1930’s dust bowl. *Natural Resources Conservation Districts*, Ariz. State Land Dep’t., <https://land.az.gov/natural-resources/natural-resource-conservation-districts> (last visited Oct. 13, 2016). The conservation district program promotes restoration and conservation of the state’s natural resources. *Id.* As part of the conservation district program, WWDNRCD and HNRCD operate pursuant to Arizona Revised Statutes (“A.R.S.”) § 37, Chapter 6 and are governed by locally elected and appointed

officials. *Id.* The districts are charged with evaluating the conservation needs of their respective areas and partnering with local, state, and federal agencies to restore and conserve the landscapes and waters of their respective regions. *Id.* The statutory purpose of the WWDNRCD and HNRCD is defined as follows:

to provide for the restoration and conservation of lands and soil resources of the state, the preservation of water rights and the control and prevention of soil erosion, and thereby to conserve natural resources, conserve wildlife, protect the tax base, protect public lands and protect and restore this state's rivers and streams and associated riparian habitats, including fish and wildlife resources that are dependent on those habitats, and in such manner to protect and promote the public health, safety and general welfare of the people.

Ariz. Rev. Stat. Ann. § 37-1001 (2016); *see also Natural Resources Conservation Districts*, Ariz. State Land Dep't, <https://land.az.gov/natural-resources/natural-resource-conservation-districts> (last visited Oct. 13, 2016).

27. The Arizona Association of Conservation Districts ("AACD") is the state association of the Arizona Conservation Districts. *See Ariz. Ass'n of Conservation Dists.*, <https://aznrcd.org/> (last visited Oct. 13, 2016). The mission of the AACD is to support the conservation partnerships between the conservation districts and state and federal agencies, raise awareness of the activities of the conservation districts, and provide them with training and education. *See id.*

1 28. The members of the WWDNRCD, HNRCD, and AACD have been
2 victimized and damaged by DHS's failure to comply with NEPA because their
3 members live along the Southwest border which has been environmentally
4 degraded as a result of DHS's discretionary actions relating to border enforcement
5 and immigration law. The policies of DHS have resulted in an increase in the
6 numbers of individuals illegally crossing their members' properties. *See* Jessica
7 Vaughan's Report, "Analysis of Discretionary Agency Actions (Past and Ongoing)
8 That Resulted in Cumulatively Significant Environmental Impacts on the
9 Southwest Border," attached hereto in Ex. 2. at 750 as Ex. B.
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14 29. Fred Davis is the Chairman of WWDNRCD, located in Southeastern
15 Arizona. F. Davis Aff. at ¶ 1. He is also member of AACD. Mr. Davis's affidavit is
16 attached hereto as Ex. 6. He notes that "[t]he WWDNRCD seeks to protect,
17 conserve and sustain natural resources in th[e] region, particularly soil and water."
18
19 *Id.* at ¶ 2. Most of WWDNRCD's members are, like Mr. Davis, "multi-generation
20 ranchers and farmers who are stewards of their land that plan to pass their
21 traditional way of life on to future generations." *Id.* Mr. Davis lives on a vast ranch
22 25 miles from the US/Mexico border that has been in his family for generations. *Id.*
23 at ¶ 1. For Mr. Davis, "the ranch was a quiet and peaceful place to live and raise a
24 family" before illegal border-crossings by illegal aliens and smugglers started
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1 becoming rampant across his property. *Id.* at ¶ 5. The unending parade of illegal
2 aliens has “physically degraded” his land. *Id.* at ¶ 11.

3
4 The constant trampling of the land by illegal border
5 crossers has left permanent damage as well. Many illegal
6 aliens crossing over our native grasslands will follow the
7 paths beaten over time by previous crossers, and in those
8 places, the grass will no longer grow. There are now
9 eleven paths near our house where sixty percent of the
10 grass is gone. These grasses are native to the area, and
11 illegal border crossers also have an adverse impact on
12 protected plant life. Native plants that grow on our
13 property, such as the Soaptree Yucca cactus, which can
14 grow to be 12 feet high, Century Plant, barrel cactus, and
15 the Mesquite tree that have been trampled by drug cartels
16 crossing in vehicles. What makes me even angrier is that
17 many of these plants are protected by the state of
18 Arizona—we ourselves would be violating the law if we
19 removed these native plants from our property. Yet these
20 plants that take 6 to 8 years to grow are destroyed
21 without consequence by illegal aliens.

22 *Id.* at ¶ 13.

23 Mr. Davis and his family have “picked up literally tons of trash” that illegal border-
24 crossers have dumped on their land. *Id.* at ¶ 11. They have found human feces on
25 their property “in abundance.” *Id.* The garbage is a dangerous health hazard. *Id.* It
26 has killed some of their cattle, and it has made ranching “far more difficult,
27 dangerous and expensive.” *Id.* at ¶¶ 11, 12. The years of illegal border-crossings
28 have shattered Mr. Davis’s peace and tranquility. *Id.* at ¶ 14. Life on the ranch has

1 become much more stressful; Mr. Davis feels like he is living in a “war zone.” *Id.*
2 at ¶ 15.

3
4 We feel that we are in constant reactionary mode, as
5 people keep unlawfully crossing, and we know some of
6 them may be a threat to our personal safety, giving us
7 great anxiety for our children. The dogs bark in the night
8 at the border crossers, making it difficult for us to sleep.

9
10 *Id.* at ¶ 14.

11 The constant stress means that Mr. Davis has “headaches and health problems [] at
12 home, that go away when I travel.” *Id.* at ¶ 15. The DHS actions at issue in this
13 case “have real, concrete, harmful ongoing impacts on me, my family, our land,
14 and the general border environment.” *Id.* at ¶ 20. Like so many others, Mr. Davis is
15 “angry contemplating all of the damage done to our environment that might never
16 have occurred if DHS had followed its obligations under NEPA.” *Id.* at ¶ 20.

17
18 30. Peggy Davis has served as a clerk and as the Education Center
19 Director of the WWDNRCD. P. Davis Aff. at ¶ 2. She is also a member of the
20 AACD. *Id.* Her affidavit is attached hereto as Ex. 7. Mrs. Davis lives with her
21 husband Fred Davis, together with her children and grandchildren on a 10,000-acre
22 ranch 25 miles from the Arizona/Mexico border. *Id.* at ¶ 1. In her role as clerk and
23 Education Director, Mrs. Davis has planned workshops on such topics as water and
24 soil, solar energy, estate planning and ranch tours. *Id.* at ¶ 2. Because of the
25 unending flow of illegal border-crossers over her land, she can no longer take
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1 walks or ride bikes alone. *Id.* at ¶ 4. She is “afraid to go alone without a firearm.”

2 *Id.* Mrs. Davis’s enjoyment of her ranch has diminished significantly over the years

3 because DHS, and INS before it, adopted policies that have failed to secure the

4 border. *Id.* Accordingly, “it feels like our land has been under siege.” *Id.* at ¶ 1. She

5 and her family are constantly picking up trash of all sorts, as well as continuously

6 repairing fences, as documented in the photographs that are included in her

7 affidavit. *Id.* She too has suffered injuries because DHS has failed to conduct any

8 NEPA analysis regarding its myriad immigration-related actions, stating:

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12 Perhaps, if DHS had done the proper analysis and
13 informed the public when it made discretionary decisions
14 that encouraged illegal aliens to continue crossing the
15 border, as the law requires, it would have decided that it
16 was important to ramp up enforcement instead. Perhaps
17 the public, if it had understood the environmental costs of
18 DHS’s actions, would have demanded more effective
19 enforcement. My land and the whole border region in the
20 Southwest might look different today—unspoiled, serene,
21 and undamaged environmentally. Instead, ceaseless flows
22 of people have crossed the border, with no end in sight, .
23 . . because, our government has simply given up.

24 *Id.* at ¶ 9.

25 31. Californians for Population Stabilization (“CAPS”) is a 501(c)(3),
26 non-partisan, membership-based, public interest organization organized and
27 existing under the laws of California. *See: About Us*, Californians for Population
28 Stabilization, <http://www.capsweb.org/about/about-us> (last visited Oct. 12, 2016).

1 CAPS's mission is to end policies and practices that cause human overpopulation
2 and the resultant decline in Americans' quality of life in California as well as in
3 the United States. *Id.* CAPS believes that unending human population growth
4 causes environmental damage and overuse of nature's bounty, leaving an
5 impoverished Golden State. *See id.* Unending population growth in California also
6 strains local infrastructure. *Id.* Further, it frays community institutions.

7
8
9 Environmental impacts resulting from unending population growth include, but are
10 not limited to: damage to air quality, increasing sprawl, increasing demand for
11 water, increasing water pollution, increasing greenhouse gases and accelerating
12 climate change, exacerbated traffic congestion, school overcrowding, loss of green
13 space, farmland, forests and wildlife, and other non-renewable resources. *See*
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California's population growth presently stems from immigration and births to
immigrants, CAPS's priority goal is to reduce both legal and illegal immigration
into California and the United States. *Id.* Indeed, California's population nearly
doubled during the period from 1970 to 2015, from approximately 20 million to
39.6 million.³ Most of that population growth resulted from immigrants and their

³ Steven A. Camarota & Bryan Griffith, *By State: Number Immigrants and Their Minor Children*, Center for Immigration Studies (March 28, 2016),

1 offspring. *Id.* California has the largest share of foreign born of any state in this
2 nation. *Id.* In 1970, immigrants and their minor children constituted roughly 13%
3 of California's population--2.6 million people. *Id.* By 2015, 37.4% of California's
4 population was comprised of immigrants and their minor children--nearly 15
5 million people. *Id.* There is no end in sight to the state's immigration-driven
6 population growth. CAPS and its members who live, work and pursue recreational
7 activities in California are adversely affected by the population growth resulting
8 from the DHS actions at issue. CAPS members have a substantial interest in
9 ensuring that DHS complies with federal law, including the requirements of
10 NEPA. CAPS and its members are being, and will continue to be, harmed by the
11 failure of DHS to make any attempt to comply with NEPA. Plaintiff's expert
12 Jessica Vaughan estimates over two million individual beneficiaries of DHS's
13 discretionary actions remain settled in California. *See* Ex. 2 at 763, in Ex. C.

19 32. Richard D. Lamm, an attorney and Certified Public Accountant,
20 served as Governor of Colorado from 1975 to 1987, and is a longtime member of
21 CAPS. R. Lamm Aff. at ¶ 2. Governor Lamm, whose affidavit is attached hereto as
22 Ex. 8, has been a resident of Colorado since 1961. *Id.* at ¶ 1. He is presently Co-
23 Director of Public Policy at the University of Denver. *Id.* at ¶ 2. Governor Lamm
24 has "been deeply involved in the environmental movement for decades and ha[s]

1 always been concerned about out of control population growth.” *Id.* at ¶ 3. While
2 attending law school at Berkeley during the years 1958-1961, he “was already
3 appalled at what population growth was doing to California.” *Id.* at ¶ 5. He notes
4 that California’s population has continued to swell, now largely because of
5 immigration. *Id.* That is why he joined CAPS. *Id.* In the more than 50 years since
6 Governor Lamm moved to Colorado he has “embraced and cherished its
7 wilderness.” *Id.* at ¶ 8. He notes that he has climbed 50 of Colorado’s highest
8 peaks, hiked and skied its mountains, and kayaked its rivers. *Id.* “That unspoiled,
9 beautiful Colorado that stirred me so deeply has fallen victim to population growth,
10 which is inseparable from mass foreign immigration.” *Id.* Unhappily, he has
11 “watched Colorado go from a lovely state with a high quality of life to a Colorado
12 whose front range (from Pueblo to Fort Collins) is rapidly becoming a Los Angeles
13 of the Rockies.” *Id.* Substantial numbers of immigrants have settled in Colorado
14 and the state’s population has more than doubled during the period 1970 to 2015--
15 from 2.2 million people to about 5.5 million people.⁴ Many of the newcomers are
16 Americans who have been “crowded out of California by endless foreign
17 immigration.” R. Lam. Aff. at ¶ 14. He believes that his lifelong effort “to save
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27 ⁴ See Statista, The Statistics Portal, *Resident Population in Colorado from 1960*
28 *to 2015, in millions*, <https://www.statista.com/statistics/206101/resident-population-in-colorado/> (last accessed on October 15, 2016).

1 Denver from an environmentally unsustainable, high growth future would not have
 2 been in vain” if DHS had complied with NEPA “as it was supposed to.” *Id.* at ¶ 17.

3
 4 The National Environmental Policy Act (NEPA), which
 5 became law in 1970, was supposed to have stopped this
 6 kind of ill-considered population growth from happening.
 7 In the 1960s and 1970s, the environmental movement
 8 understood how important population stabilization was to
 9 everything it stood for. This emphasis in NEPA itself of
 10 the importance of population growth reflects this priority.
 11 NEPA, the bedrock of our environmental law, was
 12 designed to ensure for environmentally informed
 13 decision making and public participation Federal
 14 agencies, like the Department of Homeland Security
 15 (DHS), are not supposed to carry out actions that affect
 16 the environment without first considering the
 17 consequences. What can have a greater environmental
 18 impact on our states and the nation than immigration? In
 19 the days when NEPA was passed, population growth was
 20 not substantially a matter of immigration, but now
 21 immigration is our population’s primary driver.
 22 Moreover, it is certainly the primary driver of population
 23 growth that is most within the federal government’s
 24 control. Our immigration levels are ultimately a policy
 25 choice. DHS is the federal agency that actually
 26 implements our nation’s immigration policies, and so
 27 DHS is responsible for carrying out the federal policy
 28 that has the greatest impact on the environment of all.
 And yet, DHS has done zero environmental review of its
 immigration related actions. Zero!

23
 24 *Id.* at ¶ 16.

25 33. Josephine Foulk Wideman, whose affidavit is attached as Ex. 9, has
 26 been the Executive Director of CAPS for the past fifteen years. J. Wideman Aff. at
 27 ¶ 2. Ms. Wideman has lived in Santa Barbara, California for nearly 40 years. *Id.* at
 28

¶ 1. Over the decades she has unhappily witnessed the ongoing erosion of Santa Barbara's small town charm due, in large part, to unending, unrelenting population growth, which has doubled the size of her town. *Id.* at ¶ 3. Many special, beautiful places in Santa Barbara that Ms. Wideman has treasured over the years, including local parks, playgrounds, and waters, are now routinely overrun with people. *Id.* at ¶ 7. As an environmentalist, she laments the impacts of this growth not only on her town, but also upon California's famed, unique biodiversity, and its unparalleled landscape. *See id.* at ¶ 13. She further laments the ever-increasing ecological footprint of ever more people upon California's natural systems. *See id.* at ¶¶ 7-8. California's historic drought is exacerbated by population growth, and, due to water restrictions, she no longer cultivates an English garden at her home. *Id.* at ¶ 8. She notes that "[d]espite California's progressive stance on water consumption, energy consumption and protecting the environment, unending population growth erases those conservation efforts because more and more people mean more and more energy consumption, water consumption and land consumption." *Id.* at ¶ 16. Ms. Wideman believes that the Santa Barbara and California she loves has been and are continuing to be sacrificed at the altar of endless population growth. *See id.* at ¶ 19. The reality is that this massive, unending population growth is now resulting almost exclusively from the arrival of foreign nationals in California, together with their subsequent offspring. *See id.* at ¶ 19. Ms. Wideman notes that

1 out of a population of 39 million, over 10 million Californians are foreign-born, a
 2 higher percentage than any other state. *See id.* at ¶¶ 16-17. If current trends
 3 continue, California is headed to a population of 50 million in the coming decades,
 4 with no end in sight. *Id.* She laments the enormous consequences of DHS's failure
 5 to even attempt to comply with NEPA in its immigration-related actions, stating:
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7
 8 I have been dismayed that for all these years
 9 DHS has failed to even attempt to comply with
 10 NEPA. The agency has never considered the
 11 likely environmental impacts of its agency
 12 decisions and actions relating to immigration.
 13 DHS[] is the biggest driver of US population
 14 growth. And because it is *people* who impact the
 15 environment, it is incredible to think how
 16 different Santa Barbara, California, and the
 17 entire country might be if DHS had complied
 18 with NEPA. For example, DHS might not have
 19 implemented as many programs granting illegal
 20 aliens reprieves from deportation (such as
 21 Deferred Action for Childhood Arrivals), if the
 22 resultant overpopulation issues and impending
 23 overuse of resources had been evaluated and
 24 considered and made open to the American
 25 public. Going forward, the agency must comply
 26 with NEPA and help our nation move toward
 27 real environmental sustainability.
 28

23 *Id.* at ¶ 19.

24
 25 34. Don Rosenberg, whose affidavit is attached hereto as Ex. 10, is a 27-
 26 year resident of California. D. Rosenberg Aff. at ¶ 1. He is also the father of Drew
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1 Rosenberg, a 25-year old law student who was hit and killed in 2010 by Roberto
 2 Gallo, a Honduran national who illegally entered the United States and
 3 subsequently received Temporary Protected Status under federal law, one of the
 4 federal actions at issue in this case. *Id.* at ¶ 8. Mr. Rosenberg joined CAPS after his
 5 son was killed because:
 6

7
 8 mass immigration was imposing huge social and
 9 environmental costs. Mass immigration wasn't adding to
 10 our quality of life--it was detracting from it in a
 11 tremendous way. Furthermore, our government is even
 12 fostering and overlooking illegal activity, because our
 13 "leaders" were more interested in votes, campaign
 14 contributions and the cheap labor

15 *Id.* at ¶ 13. Mr. Rosenberg dreads the ever-increasing congestion of Los Angeles
 16 County's roads, and resents the ever-increasing air pollution coming from
 17 "millions of cars sitting on the 101 freeway for hours." *Id.* at ¶ 5. Because of the
 18 drought, exacerbated by endless population growth, he and his neighbors no longer
 19 water their yards. *Id.* at ¶ 6. He finds that "[l]iving in a landscape without plants
 20 drastically reduces the natural beauty and enjoyability of the surroundings." *Id.* Mr.
 21 Rosenberg recognizes that Southern California has a limited water supply and
 22 "when more people come in, we have no choice but to use less water personally."
 23

24 *Id.* He states:
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26
 27 I fear that in the future, the environment will continue to
 28 deteriorate in Southern California. Despite the fact that
 we seem to have reached our land's capacity, and we are

1 already straining to support the population we have now,
2 DHS seems to only want to force ever more population
3 growth on the nation. For Southern California's future, I
4 see more water shortages, more traffic, and more
5 pollution. The state is already in a hole, and it just seems
6 like our public officials are looking for a bigger shovel. It
7 will probably drive me out of California in the future.

8 *Id.* at ¶ 14. Finally, Mr. Rosenberg wistfully muses that perhaps, if DHS had
9 complied with NEPA, it might not have created such a huge TPS program that
10 allowed his son's killer to stay in the United States and maybe his son would still
11 be alive. *Id.* at ¶ 16.

12 35. Claude Wiley, whose declaration is attached hereto as Ex. 11, joined
13 CAPS because "something needs to be done about the population explosion, the
14 reckless disregard of immigration laws, and the ecological impacts" resulting from
15 both. C. Wiley Decl. at ¶ 2. He lives in Pasadena, California and commutes to work
16 by bicycle (wearing a mask) because he is "dedicated to doing [his] part to reduce
17 pollution and carbon emissions." *Id.* at ¶ 5. But large scale unending population
18 growth in the Los Angeles region, all of which now results from immigration,
19 simply adds ever more pollution and erases air quality gains. *Id.* at ¶ 5. Mr. Wiley
20 is frustrated because "if not for the immigration-driven population growth, the air
21 quality in the Los Angeles region would be getting better." *Id.* at ¶ 10. He takes
22 mass transit to lessen his impact on the environment and observes that, due to
23 strong state and local policies to support mass transit, the buses and the trains are
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1 full and yet the roads are still choked with cars: “we’re starting to hit a wall.” *Id.* at
 2 ¶ 13. The lovely places where Mr. Wiley has enjoyed hiking and nature-watching
 3 over the years, including the San Gabriel Mountains and Echo Mountain, grow
 4 ever more crowded with people, and “[t]he more crowded the path becomes, the
 5 less I want to use it.” *Id.* at ¶ 15. Like others, Mr. Wiley fears for California’s
 6 future if population growth trends continue unabated. *Id.* at ¶ 18. He notes that
 7 “DHS continues to drive population growth through its discretionary actions . . .”
 8 *Id.* “If DHS had only followed its legal obligations under NEPA, perhaps the
 9 public would have realized the impact immigration was having on the environment
 10 and made different decisions--Perhaps the Los Angeles area and California would
 11 look very different today.” *Id.* at ¶ 17.

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 16 36. Ric Oberlink has lived in Berkeley California for nearly 40 years and
 17 is a member of CAPS. R. Oberlink Aff. at ¶ 1-2. Mr. Oberlink’s affidavit is
 18 attached as Ex. 12. As the population of California, and particularly the Bay area,
 19 has continued to rise, his enjoyment of local parks has diminished, due to increased
 20 crowding. *Id.* at ¶ 4. He notes that “[a]n increased human population has made
 21 camping in wilderness areas and national parks much more troublesome and much
 22 less convenient than it was in previous years when population levels were lower.”
 23 *Id.* at ¶ 5. “Camping spots in prime areas at prime times require advance
 24 reservations, often far in advance.” *Id.* at ¶ 5. Mr. Oberlink’s enjoyment of cycling
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1 has also diminished because areas he once cycled through are more heavily
 2 trafficked and open space has been developed. *Id.* at ¶ 8. He notes that during the
 3 years 1990-2014, the population increase in Alameda County, where Berkeley is
 4 located, all resulted from immigration. *Id.* at ¶ 11. By 2014, immigrants comprised
 5 31% of the county population, or 483,750 individuals out of a total population of
 6 1,559,308. *Id.* He states that in Alameda County, “the portion of the population
 7 comprised of immigrants soared from 18 percent in 1990 to 31 percent in 2014, to
 8 a total of about half a million,” not counting offspring. *Id.* Mr. Oberlink asserts
 9 that:
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13 Had DHS considered the environmental
 14 implications of its immigration actions, it might
 15 have chosen different actions, resulting in a
 16 California and an America with lower levels of
 17 population, more open space and wildlife habitat,
 18 and less environmental damage than that which we
 19 have today. Failure to review future actions could
 20 condemn this country to never-ending population
 21 growth and further diminution of natural resources.

22 *Id.* at ¶ 19.

23 37. Richard Alan Schneider is the Chair of CAPS. R. Schneider Aff. at ¶
 24 2. His affidavit is attached hereto as Ex. 13. Mr. Schneider has lived for nearly fifty
 25 years in California, mostly in Oakland. *Id.* at ¶ 1. Mr. Schneider, a conservationist
 26 and scientist, has “spent thousands of hours fighting to protect open space in the
 27 Bay Area” *Id.* at ¶ 13. He states:
 28

1 Since 2000, I have orchestrated nine open space initiative
2 campaigns in Alameda and Contra Costa Counties--
3 formulating policies to protect the land, helping write the
4 text to enact those policies, organizing signature drives to
5 qualify the initiatives for the ballot, raising money for
6 election campaigns, and then walking precincts and
7 distributing literature in favor of those ballot measures.
8 For each initiative I have put in hundreds of hours of
9 volunteer time, and when an initiative passes, as most
10 have, they must be defended in court if the developers
11 sue; and after they are successfully defended, they must
12 be continually monitored to make sure they are
13 implemented and enforced by the local jurisdiction.

14 *Id.* at ¶ 12.

15 Mr. Schneider has spent so much time trying to protect open space because he
16 enjoys observing native California species, such as hawks and eagles, and
17 irreplaceable native habitats. *Id.* at ¶¶ 18-19. The species he treasures and the open
18 space he loves regularly disappear. *Id.* He states that “California leads the nation in
19 the number of species at risk of extinction and the number of endemic species at
20 risk, those species that occur nowhere else in the world.” *Id.* at ¶ 18. The
21 disappearance of nature and wildlife is deeply disturbing to Mr. Schneider. *See id.*
22 at ¶¶ 19-20. Land is routinely bulldozed for new construction, all in service of
23 accommodating endless population growth:

24
25 Is it really too many people that are causing this
26 loss of wildlife? In California, the answer is most
27 emphatically yes. The California Department of
28 Fish and Wildlife, in its Atlas of the Biodiversity
of California, states unequivocally, “Habitat loss

1 due to human population growth presents the
 2 single biggest problem facing native plants and
 3 animals in California.”

4 *Id.* at ¶ 20.

5 Mr. Schneider observes that presently, all of California’s population growth is
 6 “coming from foreign immigration and births to immigrants.” *Id.* at ¶ 25.

7 California’s population continues to climb even though more U.S. citizens leave
 8 California for other states than move to California. *Id.* He views population growth
 9 as “one of the greatest threats to the natural world.” *Id.* at ¶ 27. And, like other
 10 affiants, he is “amazed and appalled by DHS’s total abdication of its legal
 11 obligations under NEPA.” *Id.* at ¶ 26.

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 15 38. Scientists and Environmentalists for Population Stabilization
 16 (“SEPS”) is a small, informal, non-governmental organization run by scientists, but
 17 open to all. *See generally* Scientists and Environmentalists for Population
 18 Stabilization, <http://www.populationstabilization.org/index.html> (last visited on
 19 Oct. 13, 2016). It currently has about 50 members throughout the United States. *Id.*
 20 SEPS’s mission is to improve understanding within the U.S. scientific, educational
 21 and environmental communities of the fact of overpopulation and its social,
 22 economic and environmental consequences at both the national and global levels.
 23 *See generally id.* SEPS advocates for U.S. population stabilization, followed by its
 24 gradual reduction to a sustainable level through humane, non-coercive means. *Id.*

SEPS also advocates for a gradual transition to ecological economics for our economic system. *See generally id.* It chiefly advocates by operating exhibitor booths addressing population stabilization at the annual meetings of scientific societies; SEPS is usually the only U.S. organization of its kind at these meetings. *See id.*

39. Dr. Stuart Hurlbert is the president of SEPS and a longtime member of CAPS. S. Hurlbert Aff. at ¶¶ 4, 16. His affidavit is attached hereto as Ex. 14. Dr. Hurlbert is Professor Emeritus of Ecology at San Diego State University and has lived in San Diego and Del Mar, California since 1970. *Id.* The negative impacts of constant population growth have been an ongoing subject of personal and professional concern for Dr. Hurlbert for many years. *Id.* at ¶¶ 1-2. San Diego County's population has more than doubled from 1.36 to 3.30 million people since 1970.⁵ A substantial share of the population growth is the result of immigration. As an example, the immigrant share of the population in San Diego County has risen from 17.2% in 1990 to 23.4% in 2014. S. Hurlbert Aff. at ¶ 5. Unending population growth translates into more traffic, despite the addition of new freeways and

⁵ *See* Population.us, Population of San Diego County, <http://population.us/county/ca/san-diego-county/> (last visited on Oct. 15, 2016) and Tatiana Sanchez, The San Diego Union Tribune, *SD County second largest in CA, despite slow growth*, (Jan. 4, 2016), <http://www.sandiegouniontribune.com/news/border-baja-california/sdut-san-diego-county-population-2016jan04-story.html>.

1 expansion of existing roads. *Id.* at ¶ 5. Dr. Hurlbert avers that ever more traffic, and
2 the congestion it creates, means “loss of time, restriction of travel schedules, and
3 increased aggravation [which] has had a negative impact” on him. *Id.* A particular
4 source of unhappiness is the increasing degradation of Mission Trails Regional
5 Park, one of the largest urban parks in the United States, which Dr. Hurlbert has
6 enjoyed both personally and professionally over the decades, for hiking,
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8 birdwatching and class trips. *Id.* at ¶ 7. The vastly increased use of the park and its
9 concomitant deterioration over the decades has corresponded with the population
10 growth of San Diego County. *See id.* Areas in Del Mar that Dr. Hurlbert used to
11 hike with his son are now covered with “new highways, new housing
12 developments and new shopping centers.” *Id.* at ¶ 8. For Dr. Hurlbert, “[o]ne of the
13 biggest ongoing, population-driven environmental disasters in Southern California
14 is what is happening at the Salton Sea.” *Id.* at ¶ 9. Dr. Hurlbert has studied the
15 Salton Sea for several decades. It is “one of the most important habitats for
16 waterbirds of diverse sorts in the Southwest” and Dr. Hurlbert has enjoyed bird
17 watching there for fifty years. *Id.* at ¶¶ 9, 11. Much to Dr. Hurlbert’s dismay,
18 population growth now threatens the Salton Sea because the water that drains into
19 it is now being tapped for diversion to facilitate population growth in coastal
20 California. *See id.* at ¶ 9. “It pains me greatly to be a witness to its population-
21 driven demise.” *Id.* at ¶ 11. Dr. Hurlbert is well acquainted with NEPA and
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1 distinctly recalls being “greatly pleased at its passage, with its clear references to
2 the ‘profound influences of population growth’ and ‘the critical importance of
3 restoring and maintaining environmental quality’ and the need to ‘achieve a
4 balance between population and resource use.’” *Id.* at ¶ 16. He notes that
5 population growth in both California and the United States is now driven primarily
6 by immigration, and “[i]f DHS and its predecessor agencies had been doing proper
7 NEPA analyses all along, it might have changed its policies long ago, and I might
8 have seen much less damage occur to the places I love.” *Id.* at ¶ 19.

12 40. Glen Colton has lived in Fort Collins, Colorado for 37 years. G.
13 Colton Aff. at ¶ 1. Mr. Colton’s affidavit is attached as Ex. 15. When he moved to
14 Fort Collins, the town had 65,000 residents and was surrounded by “wide open
15 spaces,” and agricultural land. *Id.* at ¶ 3. At that time Fort Collins was “an idyllic
16 place to live, work, and raise a family.” *Id.* at ¶ 3. Over the decades, however, the
17 town’s population has soared to 160,000 today. *Id.* at ¶ 4. Its population is expected
18 to grow by another 80,000 over the next 10 to 15 years with no end to the growth
19 in sight. *See id.* Many of the agricultural areas and “wide open spaces” that used to
20 surround the city are gone. *See id.* The population of the surrounding region is
21 “projected to nearly double” from 500,000 to one million people within 20 years,
22 with no end in sight. *See id.* Mr. Colton is negatively impacted by the endless surge
23 of population growth which causes sprawl, degradation of the Poudre River, loss of
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1 nature and wildlife, increasing light and air pollution and increasing traffic and
2 congestion. *See id.* at ¶¶ 5-7. Like Mr. Oberlink, Mr. Colton’s enjoyment of
3 protected public land in the region has diminished because more and more users
4 are “putting increasing pressure on trails, fragile habitat and wildlife.” *Id.* at ¶ 8. He
5 unhappily notes that Estes Park, the gateway to Rocky Mountain National Park,
6 has changed over the years he has visited and now “is a crowded, congested mess .
7 . . .” *Id.* at ¶ 8. The destruction of the natural world from “rampant and destructive
8 effects of population growth” is evident to Mr. Colton as he travels around the
9 western United States. *Id.* at ¶ 10. He states that “[w]ater issues are becoming
10 increasingly dire, infrastructure is overloaded, wildlife habitat is being destroyed,
11 development is rapidly encroaching on fire prone areas, congestion and crowding
12 is widespread, and consumption and resulting energy usage . . . are increasing.” *Id.*
13 He does not believe that this endless population growth is ecologically sustainable
14 and indeed, feels “incredibly betrayed and cheated by the United States” because
15 he chose to have only one child to help stabilize the nation’s population yet the
16 federal government has embraced a national population policy that imposes
17 unending massive population growth through immigration. *Id.* at ¶ 15. DHS and
18 the State Department are “de facto U.S. growth spigot[s]” that have completely
19 ignored NEPA. *Id.* at ¶ 17. If these agencies had complied with NEPA, “the US
20 landscape . . . would most likely look very different today.” *Id.*
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1 41. Caren Cowan has been the Executive Director of the New Mexico
2 Cattlegrowers' Association ("NMCGA") for nineteen years. C. Cowan Aff. at ¶ 2.
3 Ms. Cowan's affidavit is attached hereto as Ex. 16. The purpose of NMCGA is to
4 promote the interests of the cattle-ranching community in New Mexico and
5 nineteen other states. *Id.* As Ms. Cowan states, "We preserve and protect our land
6 not only because we depend on the land economically, but also because we love
7 our land and way of life. We also seek to protect the land in order to ensure the
8 wellbeing and opportunities of generations to come." *Id.* at ¶ 3. Ms. Cowan's
9 family has been continuously ranching in Cochise County, Arizona since 1884, and
10 she owns part of a ranch near Elfrida, Arizona. *Id.* at ¶ 4. She has always enjoyed
11 being on the borderlands and calls it "a special place." *Id.* at ¶ 6. Ms. Cowan states,
12 "I experience a spiritual renewal when I am out in these vast open spaces with no
13 sounds other than wildlife and livestock, and not a person for miles around." *Id.*
14 Because of the constant fear of illegal border-crossers, Ms. Cowan no longer feels
15 safe out on the range. *Id.* at ¶¶ 5, 7 Her grandmother's homestead was ransacked
16 and despoiled by illegal aliens on multiple occasions. *Id.* at ¶ 9. Many members of
17 NMCGA have also experienced criminal activities on their lands, including stolen
18 vehicles and break-ins. *Id.* at ¶ 7. Ms. Cowan understands DHS has failed to
19 consider any of the environmental impacts resulting from its myriad of agency
20 actions and finds this a "shocking disappointment." *Id.* at ¶ 10.

42. John W. Ladd is a supervisor for the HNRDC and a member of the AACD. J. Ladd Aff. at ¶ 4. His affidavit is attached as Ex. 17. Mr. Ladd has lived his entire life on a 16,400-acre ranch on the Arizona/Mexico border. *Id.* at ¶ 1. The ranch has been in his family since 1896. *Id.* at ¶ 1. He states that “[r]anching on this land is my heritage--passed from previous generations to me, and it is a way of life I have always hoped to pass on to many generations to come.” *Id.* During his youth, illegal border-crossers were not much of a problem, but he states the flow “has become such a problem that it has ruled our lives and dictated the way we ranch. An endless stream of illegal border crossers has trashed my land and destroyed my enjoyment of my property.” *Id.* at ¶ 2. The grass has stopped growing in areas used as trails and “[t]he ground where grasses no longer grow is an eyesore that reminds me of how much environmental damage I am constantly suffering.” *Id.* at ¶ 9. He estimates that hundreds of thousands of illegal border-crossers have been caught by the border patrol on his property. *Id.* at ¶ 5. This huge flow of people has led to the dumping of approximately 20 tons of trash on his property--too much to control, despite Mr. Ladd and his family’s efforts to pick up as much as they can. *See id.* at ¶ 6. Much of this garbage ultimately gets swept into the San Pedro River, which was clean enough to swim in when he was young but is now polluted with trash and human waste. *See id.* at ¶¶ 6-7. Mr. Ladd understands that DHS has never done “any environmental analysis that acknowledges that

1 arriving aliens have environmental impacts.” *Id.* at ¶ 13. This failure affects Mr.
2 Ladd personally, because “[i]f DHS had done the proper NEPA analysis of the
3 environmental impacts of its policies before implementing them, perhaps it would
4 have realized that the environmental costs were too severe. The damages to the
5 environment on my land might never occurred if DHS and the INS had followed
6 NEPA.” *Id.* at ¶ 14.
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9 43. John Charles Oliver is the President of Floridians for a Sustainable
10 Population (“FSP”). J. Oliver Aff. at ¶¶ 4, 17. His affidavit is attached hereto as
11 Ex. 18. FSP was established as a not-for-profit in 1994 in an effort to educate
12 Floridians about the necessity to stabilize Florida’s human population in order “to
13 preserve and protect our natural resources and open spaces for future generations to
14 enjoy.” *Id.* at ¶ 17. FSP recognizes that immigration is now the engine driving
15 population growth in both Florida and the entire United States. *See id.* FSP
16 operates a website and, among other things, commissioned a sprawl study in 2000
17 to coincide with Florida Overpopulation Awareness Week. *Id.* In the fifteen years
18 following that 2000 campaign, Florida’s population has continued to mushroom,
19 from about 16 million to over 20 million. *Id.* at ¶ 16. Mr. Oliver has lived 28 years
20 in Southeastern Florida--Broward, Palm Beach and Martin Counties. *Id.* at ¶¶ 1, 6.
21 The population of Broward increased from 628,980 to 1,815, 269 from 1970 to
22 2014. *Id.* at ¶ 16. Palm Beach County tells much the same story; its population
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grew from 353,158 in 1970 to 1,359,074 in 2014. *Id.* Martin County’s population has increased from 28,460 in 1970 to 149,658 in 2014. *Id.* During the years he has lived in Florida, Mr. Oliver has witnessed and experienced the harmful impacts of intense population growth upon the natural world, especially water habitats. *Id.* at ¶ 13. Mr. Oliver is a certified diver and has “done extensive diving and fishing on the reefs of Broward and Palm Beach Counties, the Florida Keys, the Bahamas, and Cozumel Mexico.” *Id.* at ¶ 2. Coral reefs he enjoyed so much in the 1970’s are largely gone now: “Today, the beautiful coral reefs I dived and fished [on] in Broward and Palm Beach County are no longer living[;] [93%] of hard corals have vanished due to six municipal sewage outfalls, port-dredging, and coral bleaching due to carbon acidification caused by the increase of fossil fuels being burned.” *Id.* at ¶ 9. Formerly an avid fisher, Mr. Oliver no longer fishes as often because boat launches are backed up and it is hard to find a place to put one’s boat in the water. *Id.* at ¶ 14. Previously-free boat ramps now charge money. *Id.* Moreover, numerous waterways, especially the St. Lucie River, have become polluted and contaminated by the septic tanks installed for thousands of new homes built along the river and fertilizer nitrate runoff:

The river grasses that covered the bottom of the estuary are now dead and the bottom is covered with green slime. These grasses were essential to sustaining the entire food chain of fish, birds, turtles, and marine mammals. Many of the dolphins and manatees have sores on their bodies and some have died. Unfortunately, this scenario is being

1 repeated at an alarming pace in waters across the state.
2 The estuary of the west coast of Florida by Pine Island
3 that was one of my favorite places to fish has also seen
4 declining water quality.

5 *Id.* at ¶ 13. Mr. Oliver further notes that “[m]any species of table fare fish are now
6 heavily regulated due to overharvesting...[n]umerous reefs in the Florida Keys have
7 become Marine Sanctuaries and are totally off limits to fishing.” *Id.* at ¶ 15.

8 Florida’s rapid population growth over the past fifty years has been exacerbated by
9 large inflows of immigrants--over 25% of Florida’s 20-million plus-population of
10 are immigrants and their children. *Id.* at ¶ 16. Most of Florida’s recent population
11 growth is presently the result of federal immigration policies--67% according to a
12 recent report, “Vanishing Open Spaces.” *Id.* at ¶ 19. Mr. Oliver understands that
13 DHS has not considered the environmental impacts of its myriad immigration-
14 related actions, all the while, he says, “it has been established without question that
15 the doubling and tripling of our population has had a very detrimental effect on our
16 environment.” *Id.* at ¶ 23.

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21 44. Ralph Pope is a retired Natural Resource Management/Ecologist for
22 the U.S. Forest Service. R. Pope Aff. at 7. His affidavit is attached hereto as Ex.
23 19. Mr. Pope has lived in Southeastern Arizona and Southwestern New Mexico
24 along the U.S/Mexico border for most of his life. *See id.* at ¶¶ 1-2. His affidavit
25 details his personal and professional pleasure over the decades, experiencing and
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1 enjoying the entire “scope and range of southwest ecosystems, from desert to high
2 elevation mixed conifers.” *See id.* at ¶ 10. He notes his particular affection for the
3 region’s famed “sky islands”--hot spots of great biodiversity found nowhere else
4 on the globe. *Id.* Mr. Pope devoted his career to monitoring and trying to protect
5 the Piloncillo, Chiricahua and Dragoon Mountains, federal lands which make up
6 the Douglas Ranger District. *Id.* at ¶ 4. His job with the Forest Service entailed
7 monitoring ecosystem health and livestock grazing operations on federal lands. *Id.*
8 Unfortunately, over the decades, Mr. Pope has personally witnessed the ecological
9 degradation of “unique native ecosystems located on hundreds of thousands of
10 acres of once pristine and unspoiled lands” *Id.* at ¶ 5. This degradation was
11 caused by illegal border-crossings, whose destructive impacts include trampled
12 native vegetation, garbage, polluted water, destroyed wilderness and fires that burn
13 out of control. *Id.* at ¶ 11. Mr. Pope’s affidavit describes the destruction of Burro
14 Springs and the Chiricahua Mountain Range that occurred as a result of fires set by
15 illegal border-crossers. *See id.* at ¶¶ 11, 14. One significant negative impact of such
16 fires is that much of the native vegetation gets burned away and is replaced by
17 invasives. *See id.* at ¶ 15. He states that “[a]s an ecologist, this upsets me
18 tremendously.” *Id.*

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27 **B. DEFENDANTS**
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1 45. Defendant, DHS, is a federal agency which was established in 2003,
2 pursuant to the Homeland Security Act passed on November 25, 2002. *See*
3 Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (2002).
4 Pursuant to this grant of authority, DHS is mandated to administer border security,
5 immigration enforcement and naturalization, and establish and administer rules
6 governing the granting of visas or other forms of permission to enter the country.
7 *See* 116 Stat. at 2178, 2187. By the authority of that Act, DHS took over the
8 functions of government formerly delegated by Congress to an agency known as
9 the U.S. Immigration and Naturalization Service (“INS”), a division since 1940 of
10 the Department of Justice. DHS now carries out the functions of the former INS,
11 that is, the regulation of immigration into the U.S., through three sub-agencies, U.S.
12 Customs and Border Protection (“CBP”), U.S. Citizenship and Immigration
13 Services (“USCIS”), and Immigration and Customs Enforcement (“ICE”).⁶ As a
14 federal agency, DHS is subject to NEPA and the APA. In accordance with NEPA,
15 DHS has adopted NEPA regulations to guide its discretionary agency action
16 decisionmaking. *See* 42 U.S.C. § 4333; Dep’t of Homeland Sec., DHS Directive
17 023-01, Environmental Planning Program (2006) (attached hereto as Ex. 20);
18 Instruction Manual, *supra* note 2 (*See* Ex. 5); Synopsis of Administrative Record to
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27 ⁶ *Our History*, U.S. Citizenship and Immigration Services (May 25, 2011),
28 <https://www.uscis.gov/about-us/our-history> (providing a discussion of the history
of the organization of immigration regulation within the U.S. government).

Support Proposed New Categorical Exclusions Under the National Environmental Policy Act, Department of Homeland Security (Dec. 2014),
https://www.dhs.gov/sites/default/files/publications/CATEXs_admin%20record_version_Final_Dec2014_508compliantversion.pdf.

46. Defendant Jeh Johnson is sued in his official capacity as the Secretary of DHS (“Secretary”). The Secretary is authorized to lead and manage DHS. The Secretary is responsible for ensuring that DHS’s actions, such as those actions at issue *sub judice*, comply with the requirements of NEPA.

GENERAL ALLEGATIONS

Connecting the Dots: People Cause Environmental Impacts. Therefore, DHS Actions that Address the Entry and Settlement of People into the United States are Subject to NEPA.

47. The Allegations in this complaint rest on a set of straightforward facts, and one need only connect the dots:

i) NEPA requires Federal agencies to apply NEPA when undertaking actions and making decisions that could have a significant impact on the human environment.

ii) One of the biggest environmental impacts results directly, as well as indirectly, from the size of human population, particularly where vital natural resources such as drinking water are over-

1 subscribed.

2 iii) The primary factor driving U.S. population growth is
3 international migration. Immigrants from abroad add directly to the
4 nation's population by their arrival and by the children they have after
5 they come. Because the fertility of American women has been at or
6 below replacement level for many years — 2.1 children per women —
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8 absent immigration there would be very little long-term population
9 growth in the United States. Census Bureau projections published in
10 2014 indicate that because of future immigration the U.S. population
11 will be 95 million larger in 2060 than it otherwise would be absent
12 immigration.
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17 *See* Ex. 3 at 765. The Pew Research center reported in 2015 that the 72
18 million post-1965 immigrants and their offspring and grandchildren
19 account “for the majority of U.S. population growth in the past five
20 decades.” *See* Ex. 3 at 766. Indeed, Dr. Camarota estimates that during
21 the years 2010-2014, immigration and offspring added 8.3 million
22 people to the U.S. population. This increase comprises 87% of U.S.
23 population growth during that brief period. *Id.*
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27 iv) DHS is the agency charged with the mission of regulating and
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1 controlling the entry (both legal and illegal) and settlement of foreign
2 nationals into the United States.

3 v) After connecting these dots, it becomes indisputable that DHS
4 controls one of the most environmentally significant mandates
5 delegated to any federal agency, and yet DHS fails to even consider
6 the direct, much less enormous indirect and cumulative environmental
7 impacts of its actions relating to this mandate.
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10 48. DHS, like its predecessor agency INS, has continuously failed to make
11 well-informed decisions as mandated by NEPA; has failed to conduct reasoned
12 analyses of those potential impacts; has failed to engage the public on the range of
13 potential environmental impacts or create a public record so that interested or
14 affected members of the public could learn about the environmental implications of
15 the DHS actions, all as required by both NEPA and the APA.
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19 49. Despite the enormous impacts to the human environment resulting
20 from DHS's actions relating to the entry and settlement of foreign nationals into
21 the United States, DHS has failed to initiate NEPA review for these ongoing
22 actions. Such actions include the regulations, policies, programs and plans
23 promulgated pursuant to the Immigration and Nationality Act ("INA"), the
24 Immigration Control and Reform Act ("IRCA"), the Immigration Act of 1990, the
25 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"),
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1 and other immigration statutes. *See* Immigration and Nationality Act, Pub. L. No.
2 82-414, 66 Stat. 163 (1952); Immigration Control and Reform Act of 1986, Pub. L.
3 No. 99-603, 100 Stat. 3359 (1986); Immigration Act of 1990, Pub. L. No. 101-649,
4 104 Stat. 4978 (1990); Illegal Immigration Reform and Immigrant Responsibility
5 Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996). Such actions also include
6 discretionary decisions that implement and enforce the nation's immigration laws
7 which DHS and its predecessor INS adopted by means other than regulation, such
8 as via policy memoranda. The actions at issue in this complaint have resulted and
9 will continue to result in impacts to the human environment, including, but not
10 limited to significant population growth in the United States and ongoing
11 environmental degradation along the Southwest border.
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16 50. In the few paltry places where DHS makes reference to NEPA, as will
17 be demonstrated in ¶¶ 54-57 and 90-98, DHS does so in a dismissive manner, and
18 its record of decisions are woefully devoid of even the most basic forms of
19 analytical support.
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22 51. One can only conclude - as the Plaintiffs in this case have - that DHS,
23 with its outsized influence on our nation's population growth and *ipso facto* on our
24 nation's environmental health, has acted and continues to act in a manner that is
25 arbitrary and capricious with respect to its NEPA obligations.
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28 **DHS Actions Subject to NEPA**

1 52. The Instruction Manual promulgated by DHS to guide its NEPA
2 compliance is silent with respect to the entry and settlement of foreign nationals in
3 the United States, even though such entry and settlement constitutes one or more of
4 DHS's "principle programs" subject to specific NEPA mandates and EISs are
5 required for "broad actions." *See* 40 C.F.R. §§ 1502.4(b), 1505.1(b).
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8 53. DHS' ongoing actions, relating to the entry and settlement of foreign
9 nationals into the United States, are set forth as follows, attached in full where
10 publicly available in Ex. 1, and further described and analyzed in Ex. 2, by Jessica
11 Vaughan, a longtime immigration researcher at the Center for Immigration Studies:
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13 • Action 1: Legal Op. No. 98-10, issued August 21, 1998 entitled,
14 "Subject: Authority to parole applicants for admission who are not also arriving
15 aliens." This action created a discretionary authority known as "parole-in-place"
16 whereby DHS and its predecessor INS can grant "parole," generally a process that
17 allows inadmissible aliens outside the country to enter the U.S., to aliens already
18 inside the U.S. as well as those still outside. The memorandum is attached in Ex. 1
19 at 2, under Action 1.
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22 • Action 2: Directive 11002.1, issued December 8, 2009 entitled,
23 "Parole of arriving aliens found to have a credible fear of persecution or terror."
24 This action allowed for aliens claiming asylum to be released rather than detained
25 if a USCIS officer determines they have made a "credible" claim of fear of return.
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1 The directive is attached in Ex. 1 at 7, under Action 2.

2 ● Action 3: Policy Memorandum 602-0091 issued November 15, 2013
 3 entitled, “Parole of Spouses, Children and Parents of Active Duty Members of the
 4 U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former
 5 Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and
 6 the Effect of Parole on Inadmissibility under Immigration and Nationality Act §
 7 212(a)(6)(A)(i).” This action creates a parole program for relatives of military
 8 members and veterans. The memorandum is attached in Ex. 1 at 18, under Action
 9 3.
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13 ● Action 4: Memorandum issued by Secretary Johnson on November
 14 20, 2014 concerning “Families of U.S. Armed Forces Members and Enlistees.”
 15 This action expands eligibility for the military parole program. The memorandum
 16 is attached in Ex. 1 at 28, under Action 4.
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19 ● Action 5: Announcement by USCIS officials on October 27, 2011 of
 20 creation of “Parole for Caregivers of Critical Medical or Special Needs
 21 Individuals” in Northern Mariana Islands. This action creates a parole program for
 22 in home caregivers in the Commonwealth of the Northern Mariana Islands. The
 23 memorandum is attached in Ex. 1 at 31, under Action 5.
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26 ● Action 6: Memorandum issued by Secretary Johnson on November
 27 20, 2014 concerning “Directive to Provide Consistency Regarding Advance
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1 Parole.” This action formalizes the discretionary power of “advance parole,” which
2 allows aliens in the country to leave and return as parolees. The memorandum is
3 attached in Ex. 1 at 37, under Action 6.
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5 ● Action 7: Central American Minors Refugee and Parole Program,
6 initially conceived and established between July 2014 and February 2015, and
7 recently expanded on July 26, 2016 in an announcement by DHS. USCIS sets out
8 the eligibility requirements on its website on a page entitled, “In-Country
9 Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala
10 (Central American Minors – CAM).” *See* Ex. 1 at 40, under Action 7. This action
11 creates a program using parole by which aliens living in the U.S. may bring in
12 relatives and minors with whom they have legal guardianship over by petitioning
13 the U.S. government. The program criteria available on USCIS’ website are also
14 attached in Ex. 1 at 40 under Action 7.
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19 ● Action 8: Haitian Family Reunification Parole Program established
20 December 18, 2014. This action gives parole to Haitians whose immigration
21 applications have been approved to accelerate their arrival in the country. The
22 program criteria available on USCIS’ website are included in Ex. 1 at 44 under
23 Action 8.
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26 ● Action 9: Proposed “International Entrepreneur Parole Rule”
27 published in the Federal Register on August 31, 2016. Federal Register, Vol. 81,
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1 No. 169, Wednesday, August 31, 2016. This is a proposed action that would, when
2 finalized, create a program that would give parole to foreign entrepreneurs meeting
3 certain eligibility criteria. The proposed rule is attached in Ex. 1 at 51, under
4 Action 9. Plaintiff CAPS commented during the public comment period that DHS
5 must analyze the environmental impacts of this proposed rule, pursuant to NEPA.
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8 • Action 10: Temporary Protected Status (“TPS”), established in 1990
9 pursuant to INA Section 244 (8 U.S.C. § 1254a) by which INS and subsequently
10 DHS received discretion to grant foreign nationals the right to remain in the United
11 States and work. Since its inception, 20 countries have been designated. USCIS’s
12 list of countries designated and eligibility requirements are included in Ex. 1 at 92,
13 under Action 10.
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16 • Action 11: the President has discretion to authorize Deferred Enforced
17 Departure (“DED”) as part of his power to conduct foreign relations. Although
18 DED is not a specific immigration status, individuals covered by DED are not
19 subject to removal from the United States, usually for a designated period of time.
20 USCIS’s list of current countries covered and eligibility requirements are included
21 in Ex. 1 at 108, under Action 11.
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24 • Action 12: DHS Policy Memorandum 10072.1 issued March 2, 2011
25 entitled, “Civil Immigration Enforcement: Priorities for the Apprehension,
26 Detention and Removal of Aliens.” This action removes the practical threat of
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1 deportation from illegal aliens who don't meet certain criteria. The memorandum is
2 attached in Ex. 1 at 111, under Action 12.

3 ● Action 13: DHS Policy Memorandum 10075.1, issued June 17, 2011
4 entitled, "Exercising Prosecutorial Discretion Consistent with the Civil
5 Immigration Enforcement Priorities of the Agency for the Apprehension, Detention
6 and Removal of Aliens." This action ordered immigration agents to discontinue
7 enforcement activities against certain categories of illegal aliens. The memorandum
8 is attached in Ex. 1 at 116, under Action 13.

9 ● Action 14: DHS Policy Memorandum 10076.1, issued June 17, 2011
10 entitled, "Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs." This
11 action orders immigration agents to discontinue enforcement activities against
12 illegal aliens who are victims of crimes. The memorandum is attached in Ex. 1 at
13 123, under Action 14.

14 ● Action 15: DHS Memorandum, issued November 11, 2011 entitled,
15 "Case by Case Review of Incoming and Certain Pending Cases," with two
16 attachments: "Next Steps in the Implementation of the Prosecutorial Discretion
17 Memorandum and the August 18th Announcement on Immigration Enforcement
18 Priorities," and "Guidance to ICE Attorneys Reviewing the CBP, USCIS, and ICE
19 Cases Before the Executive Office of Immigration Review." This action orders
20 immigration attorneys to review pending and incoming deportation cases and to
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1 dismiss all those cases meeting certain criteria and allow the individuals to remain
2 in the country. The memorandum is attached in Ex. 1 at 127, under Action 15.

3 ● Action 16: DHS Policy Memorandum 602-055, issued November 7,
4 2011 entitled, “Revised Guidance for the Referral of Cases and Issuance of Notices
5 to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens.” This
6 action established new guidelines preventing USCIS from issuing Notices To
7 Appear without ICE’s permission in specified cases. The memorandum is attached
8 in Ex. 1 at 136, under Action 16.

9 ● Action 17: New Detainer form, which ICE announced it had issued in
10 a bulletin on December 29, 2011, and which changed the policy on detainers. This
11 action meant ICE officers could now only issue detainers for aliens that had been
12 convicted, not just booked, for a crime. The new form and the bulletin announcing
13 it are attached in Ex. 1 at 146, under Action 17.

14 ● Action 18: DHS Memorandum issued by John Morton on December
15 12, 2012 entitled, “Civil Immigration Enforcement: Guidance on the Use of
16 Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems.” This
17 action limited the circumstances under which ICE can issue detainers. The
18 memorandum is attached in Ex. 1 at 152, under Action 18.

19 ● Action 19: DHS Memorandum issued by Janet Napolitano on June 15,
20 2012 entitled, “Exercising Prosecutorial Discretion with Respect to Individuals
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1 Who Came to the United States as Children” and DHS Memorandum issued by
2 John Morton on June 15, 2012 entitled, “Secretary Napolitano’s Memorandum
3 Concerning the Exercise of Prosecutorial Discretion for Certain Removable
4 Individuals Who Entered the United States as a Child” (“DACA”). The action
5 created by these two memoranda initiated a new program giving a *de facto* lawful
6 status to certain illegal aliens. The memoranda are attached in Ex. 1 at 156, under
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8 Action 19.

10 ● Action 20: DHS Policy Memorandum 602-0093 issued November 13,
11 2013 entitled, “Adjudication of Adjustment of Status Applications for Individuals
12 Admitted to the United States Under the Visa Waiver Program.” This action allows
13 visa-overstayers admitted through the Visa Waiver Program to adjust their status to
14 lawful permanent resident. The memorandum is attached in Ex. 1 at 162, under
15
16 Action 20.

19 ● Action 21 and Action 22: DHS Memorandum issued by Secretary
20 Johnson on November 20, 2014 entitled, “Exercising Prosecutorial Discretion with
21 Respect to Individuals Who Came to the United States as Children and with
22 Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent
23 Residents.” This memorandum takes two separate actions. The first action expands
24 the DACA program so that more people are eligible and extends the duration of the
25 status. The second action creates a new and bigger program, Deferred Action for
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1 Parental Accountability (DAPA), which gives a *de facto* lawful status to the
2 parents of U.S. citizens and lawful permanent residents. The memorandum is
3 attached in Ex. 1 at 170, under Action 21 and Action 22, respectively. The two
4 actions ordered by this memorandum have been put on a temporary hold by a
5 district judge's preliminary injunction. DHS still intends to carry them out if they
6 are ultimately allowed to go forward.
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8

9 ● Action 23: DHS Memorandum issued by Secretary Johnson on
10 November 20, 2014 entitled, "Policies for the Apprehension, Detention and
11 Removal of Undocumented Immigrants." This action instructs DHS immigration
12 agents to protect a larger number of aliens from deportation than DHS policies
13 previously had. The memorandum is attached in Ex. 1 at 176, under Action 23.
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16 ● Action 24: DHS Memorandum issued by Secretary Johnson on
17 November 20, 2014 entitled, "Secure Communities." This action discontinues the
18 immigration enforcement program Secure Communities and replaces it with a
19 different program. The memorandum is attached in Ex. 1 at 183, under Action 24.
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22 ● Action 25: DHS Final Rule entitled, "Provisional Unlawful Presence
23 Waivers of Inadmissibility for Certain Relatives, Final Rule" published in the
24 Federal Register on January 3, 2013. Federal Register, Vol. 78, No. 2, Thursday,
25 January 3, 2013. This action creates a categorical waiver of the three- and ten-year
26 bars on admissibility for which certain relatives of U.S. citizens may apply. The
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1 rule is attached in Ex. 1 at 187, under Action 25.

2 ● Action 26: DHS Final Rule entitled, “Expansion of Provisional
3 Unlawful Presence Waivers of Inadmissibility; Final Rule,” published in the
4 Federal Register on July 29, 2016. Federal Register, Vol. 81, No. 146, Friday, July
5 29, 2016. This action expands the categorical waiver of the three- and ten-year bars
6 on admissibility to cover more classes of relatives of U.S. citizens. The rule is
7 attached in Ex. 1 at 232, under Action 26.
8

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10 ● Action 27: DHS Memorandum issued April 30, 2009 entitled,
11 “Worksite Enforcement Strategy.” This action suspended worksite raids, whereby
12 aliens working illegally were apprehended at their place of employment, and
13 directed ICE agents to conduct worksite enforcement largely through paper audits
14 of employment documents. The memorandum is attached in Ex. 1 at 268, under
15 Action 27.
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19 ● Action 28: DHS Policy Memorandum 602-0092 issued November 11,
20 2013 entitled, “Additional Guidance on Determining Periods of Admission for
21 Foreign Nationals Previously Admitted as H-4 Nonimmigrants who are Seeking H-
22 2 or H-3 Status.” This action allows the holders of certain dependent-visas, which
23 are derivative of their spouse, to obtain a principal visa in their own right without
24 counting the time spent previously in the country toward the maximum time-limit
25 of the visa. The memorandum is attached in Ex. 1 at 273, under Action 28.
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1 ● Action 29: INS Interim Rule proposed July 20, 1992 entitled Pre-
2 Completion Interval Training; F-1 Student Work Authorization, 57 Fed. Reg.
3 31,954 (proposed July 20, 1992); and Final Rule issued December 11, 2002,
4 entitled, “Retention and Reporting of Information for F, J, and M Nonimmigrants;
5 Student and Exchange Visitor Information System (SEVIS), 67 Fed. Reg. 76,256
6 (proposed Dec. 11, 2002) (codified at 8 C.F.R. § 212.1, 212.2, 212.3). These rules
7
8 created a program, the Optional Practical Training Program (OPT) that, in its
9 revised version in 2002, authorized all aliens in the country on a student visa to
10 remain and work for a year when they should otherwise be required to leave the
11 U.S. The 1992 interim rule and the 2002 final rule are attached in Ex. 1 at 278 and
12 at 286, respectively, under Action 29.

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16 ● Action 30: DHS Final Rule issued March 11, 2016 entitled,
17 “Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students
18 with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students,” 81 Fed.
19 Reg. 13,040, March 11, 2016 (codified at 8 C.F.R. §§ 214 and 274(a)). This action
20 expanded the Optional Practical Training (“OPT”) Program, which allows aliens in
21 the country on student visas to stay and work for a time, for students working after
22 graduation in the science, technology, engineering, and/or math (STEM) fields for
23 a longer period of time. The final rule is attached in Ex. 1 at 333, under Action 30.
24
25 A member of CAPS, and other interested individuals commented during this rule’s
26
27
28

1 public comment period stating that the rule's environmental impacts should be
2 analyzed by DHS pursuant to NEPA. DHS did not initiate a NEPA analysis.

3 Instead, it stated in its final rule:
4

5 Comment. DHS received several comments regarding
6 potential environmental costs resulting from an increased
7 population, both in the United States generally, and in
8 Silicon Valley, California specifically, where many
9 STEM jobs are located. Some also noted that California
10 has been struggling with an ongoing drought.

11 Response. Upon review, DHS remains convinced that our
12 review pursuant to the National Environmental Policy
13 Act is in compliance with the law and with our Directive
14 and Instruction.

15 Ex. 1 at 587. DHS categorically excluded this rule from NEPA analysis, finding
16 that:

17 J. Environment

18 The U.S. Department of Homeland Security Management
19 Directive (MD) 023-01 Rev. 01 establishes procedures
20 that DHS and its components use to comply with the
21 National Environmental Policy Act of 1969 (NEPA), 42
22 U.S.C. 4321-4375, and the Council on Environmental
23 Quality (CEQ) regulations for implementing NEPA, 40
24 CFR parts 1500-1508. CEQ regulations allow federal
25 agencies to establish categories of actions, which do not
26 individually or cumulatively have a significant effect on
27 the human environment and, therefore, do not require an
28 Environmental Assessment or Environmental Impact
Statement. 40 CFR 1508.4. The MD 023-01 Rev. 01 lists
the Categorical Exclusions that DHS has found to have
no such effect. MD 023-01 Rev. 01 Appendix A Table 1.
For an action to be categorically excluded, MD 023-01
Rev. 01 requires the action to satisfy each of the
following three conditions:

(1) The entire action clearly fits within one or more of the Categorical Exclusions.

(2) The action is not a piece of a larger action.

(3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023–01 Rev. 01 section V.B(1)–(3).

Where it may be unclear whether the action meets these conditions, MD 023–01 Rev. 01 requires the administrative record to reflect consideration of these conditions. MD 023–01 Rev. 01 section V.B.

DHS has analyzed this rule under MD 023–01 Rev. 01.

DHS has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule clearly fits within the Categorical Exclusion found in MD 023–01 Rev. 01, Appendix A, Table 1, number A3(a):

“Promulgation of rules . . . of a strictly administrative or procedural nature;” and A3(d): “Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.” This rule is not part of a larger action. This rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

Ex. 1 at 611-613.

- Action 31: DHS Policy Memorandum 602-0111 issued March 24, 2015 entitled, “L-1B Adjudications Policy.” This action broadens the definition of the “specialized knowledge” that an applicant must demonstrate to obtain an L-1B visa. This memorandum is attached in Ex. 1 at 634, under Action 31.

- Action 32: T and U Visa Implementation. DHS first adopted an interim rule implementing the visa categories created by the Victims of Trafficking

1 and Violence Protection Act of 2000 (PL-106-386) with the published rule “New
 2 Classification for Victims of Criminal Activity, Eligibility for ‘U’ Nonimmigrant
 3 Status,” 72 Federal Register, 53014, September 17, 2007. DHS further updated the
 4 regulations on December 12, 2008, “Adjustment of Status to Lawful Permanent
 5 Resident for T and U nonimmigrants” (codified at 8 C.F.R. § 245.24). These rules
 6 are attached in Ex. 1 at 651 and 701, under Action 32.

9 • Action 33: Order from U.S. Border Patrol Headquarters in September
 10 2011 to discontinue its practice of routinely searching buses, trains, and airports at
 11 transportation hubs along the northern border and in the nation’s interior. This
 12 action was never made public, so there is no available written record, however, two
 13 Border Patrol agents described the order to the Associated Press on condition of
 14 anonymity. *See* The Associated Press, *Border Patrol stops searches at Hubs*,
 15 Portland Press Herald, October 29, 2011,
 16 [http://www.pressherald.com/2011/10/29/border-patrol-stops-searches-at-](http://www.pressherald.com/2011/10/29/border-patrol-stops-searches-at-hubs_2011-10-29/)
 17 [hubs_2011-10-29/](http://www.pressherald.com/2011/10/29/border-patrol-stops-searches-at-hubs_2011-10-29/).

22 **Programmatic Environmental Assessment for Actions to Address an**
 23 **Increased Influx of Unaccompanied Alien Children and Family Units Across**
 24 **the Southwest Border of the United States.**

25 54. DHS did conduct a NEPA review in one instance related to the entry
 26 of foreign nationals into the United States. On June 2, 2014, the President issued a
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 28

1 Presidential Memorandum entitled, “Response to the Influx of Unaccompanied
2 Alien Children across the Southwest Border” directing the Secretary of Homeland
3 Security to establish an interagency working group to address the “humanitarian
4 aspects” of a large influx of foreign nationals. *See* Ex. 21, attached hereto, at 1266.
5
6 The President’s goal was to assure a unified response by federal agency in
7 providing “housing, care, medical treatment, and transportation” to the
8 unaccompanied alien children crossing the Southwest border. *Id.*

9
10
11 55. DHS determined that the Southwest Border Memorandum and the
12 actions DHS took in response were a federal action subject to NEPA and
13 accordingly prepared a “Programmatic Environmental Assessment for Actions to
14 Address an Increased Influx of Unaccompanied Alien Children and Family Units
15 Across the Southwest Border of the United States” (“PEA”) (attached hereto as Ex.
16 22) together with a FONSI that was issued on August 12, 2014 (attached hereto as
17 Ex. 23).

18
19
20 56. The PEA provides, in relevant part:

21
22 In addition to the influx of unaccompanied alien children,
23 there is also an increase in the number of family units
24 entering the Unites [*sic*] States. [DHS] is responsible for
25 the apprehension, processing, detention, and removal of
26 such persons crossing the southwest border into the
27 United States without authorization. The unprecedented
28 increase in the number of apprehended persons has the
potential to fill or exceed the capacity of the DHS
supporting infrastructure (real property for processing and

housing apprehended persons, services including medical care, transportation, utilities, meals, hygiene, recreation, etc.) currently available. Therefore, action is being considered at the DHS level to provide increased and expedited allocation of Departmental resources in the following three areas:

1) Provide adequate facilities for Customs and Border Protection (CBP) to safely house unaccompanied alien children (normally for no more than 72 hours) and family units until they can be transferred to the department of Health and Human Services (HHS) and Immigrations [*sic*] and Customs Enforcement (ICE) respectively, and provide adequate facilities for ICE to safely house family units;

2) Provide transportation (land, air, water) between intake, processing, and housing facilities, as well as between these facilities and physicians and dentists [*sic*] offices, hospitals, consular offices, and airports or other transportations hubs, and

3) Provide medical care, including care to treat, prevent, and minimize the spread of communicable illnesses.

Ex. 22 at 1268.

57. The PEA states that DHS's needs for increased support infrastructure (e.g., housing and associated services, transportation, and medical care), while the foreign nationals are in DHS's custody will result in only "minor" and "temporary" environmental impacts. *See* Ex. 22 at 1283-1292. DHS's NEPA review only addresses the direct physical impacts resulting from DHS's temporary custody of

1 foreign nationals. The PEA and FONSI fail to recognize that the foreign nationals
2 comprising the “increased influx of unaccompanied alien children and family
3 units” subject to the June 2, 2104 action entered the United States with the intent to
4 settle in this nation. Many have indeed settled in the United States. Like the thirty-
5 three actions set forth *supra*, the PEA and FONSI issued for this action fail to
6 address the environmental impacts on the Southwest border resulting from these
7 foreign nationals or the population growth resulting therefrom. Moreover, DHS
8 performed no NEPA review of indirect or cumulative impacts, or connected and
9 similar actions in the PEA or FONSI.
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11
12

13 **Environmental Impacts Resulting from these Actions.**

14

15 58. Upon information and belief, several million foreign nationals have
16 entered the United States and settled and will continue to enter and settle pursuant
17 to these thirty-three DHS actions. Unfortunately, DHS does not routinely publish
18 comprehensive demographic data regarding the numbers of foreign nationals
19 subject to and benefiting from most of these thirty-three actions. DHS’s failure to
20 provide public transparency regarding the numbers of foreign nationals subject to
21 and benefiting from these or other such actions has disadvantaged Plaintiffs in their
22 quest to establish the true magnitude of impacts resulting from DHS discretionary
23 actions. DHS’s compliance with NEPA would remedy this lack of transparency.
24
25 Nonetheless, Plaintiffs have obtained data that paints a picture of the multitudes of
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foreign nationals who have unlawfully crossed the Southwest border and also added to the U.S. population. In order to arrive at an estimate of foreign nationals entering and settling in the United States, Plaintiffs' expert, Jessica Vaughan, scoured available government and academic data and reports. From available sources, she was able to estimate, for at least a proportion of past and ongoing federal actions, numbers of foreign nationals that have settled or will settle, if the actions remain in operation, in the U.S. as a direct result. A detailed explanation of how she arrived at her numbers is available in her report "Discretionary Actions, Past, Ongoing, and Potential that Increased or will Increase the Settled Population of the United States," *see* Ex. A of Ex. 2 at 714.

59. Below are two charts compiled by Jessica Vaughan of the population growth resulting from those past and ongoing agency actions which she found possible to calculate. The first shows actions whose impacts to the United States population as a whole are possible to estimate. The second shows actions whose impacts to the counties in which the plaintiffs live or have lived, and whose impacts to the state of California, are possible to calculate on publically available information.

A) Estimation of Potential Population Growth in the United States of Agency Actions, on an Action by Action Basis

ACTION	DATE	NUMBER ADDED	CHAIN MIGRATION MULTIPLIER (3.45)	COMMENTS
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Humanitarian Parole (1990s)	1989-1998	176,000	607,200	These are the parolees who adjusted to LPR.
Temporary Protected Status	1990-2014	340,000		Most recent estimate available. As a result of Arrabally (see below), some will be allowed to adjust to LPR status, bringing chain migration.
Parole-in-Place	1998-Present	No data		Mixed in with other parolees.
I-601A Provisional Waiver to 3/10 year bar	2012 Effective March 2013	189,000-476,000	380,000-964,000	Without the provisional waiver (and relaxation of hardship standard) most affected aliens would not apply for LPR status, preferring to depart or stay in illegal status (and would not be able to sponsor relatives).
Expansion of I-601 Waivers	July, 2015	100,435	280,630	See above.
OPT 24-month extension for STEM graduates	2016	360,000	1,240,000	700,000 workers + 35,000 family w/50% stay rate = 360,000
U and T Visas	2007	507,000 new residents added (includes kids)	1.7 million	One-fifth are denied or withdrawn. 99.8% of those approved resulted in permanent residency.
Deferred Enforced Departure	1989	322,227		1992 – 190,000 Salvadorans 1989 – 80,000 Chinese 1997 – 40,000 Haitians 1991 – 2,227 Kuwaitis 1999 – 10,000 Liberians
Credible Fear Parole	2009	152,000 added since 2010	365,700	Assume ultimate asylum approval rate of 70%, then 106,000 become LPRs triggering chain migration.

Suspension of Worksite Raids	2009	Direct: 30,000 Indirect: Unknown	Direct effect is due to the decline in deportations from less worksite enforcement. Indirect effect is due to fewer illegal aliens leaving on their own, as employers face no consequences for hiring them, and deterrence is weakened.
USCIS Guidelines Restricting Issuance of NTAs	2011	320,000	Covers the projected number who would have been ordered deported from 2012-2016 based on denials and fraud.
Dismantling of ICE Interior Enforcement (Morton memos)	2011-12	616,000	416,000 aliens not deported since 2010 + 200,000 family members who would have left + 100,000 indirect effect due to less deterrence.
DACA	2012	728,285 granted 2,000,000 est. eligible.	Theoretically would have faced deportation (without certain other exec actions). Did not have to actually apply to avoid deportation.
Extension of Limits for H-2 status	2013	180,000 potentially eligible	Covers 2014-15. Allows aliens to stay an additional 3 years.
Allowing VWP Overstays to Adjust	2013	137,000 per year	Number of annual VWP overstays.
PIP for Military Families	2013	? ?	No data available.
Parole for CNMI Caregivers	2011	? ?	No data available.
DACA Extension	2014	596,000	Estimated to be eligible.

1	DAPA	2014	3,605,000		Estimated to be eligible.
2					
3	Priority Enforcement Program (PEP)	2014	10,000,000		The estimated number of deportable aliens exempt from deportation due to strict prioritization.
4					
5					
6	Detainer Guidance (post-conviction criminal aliens, allows sanctuaries)	2014	81,000 + 15,000 Family: 40,000		Decrease in the number of detainers issued from 2014-16 + family members not departing + sanctuary releases.
7					
8					
9	Arably Decision – Advance Parole Path to Adjustment	2014	22,340 as of December, 2015	77,000	No data available. Potentially big.
10					
11					
12	Expansion of PIP for Military Reserves	2014	?	?	No data available.
13					
14					
15	Loosening of L-1 Standards – Specialized Knowledge	2016	6,000 per year 6,000 family	41,000	Most L-1 visas lead to LPR status.
16					
17					
18					
19	Central American Refugee Program	2014	465,000	192,500	315,000 eligible parents (protected from removal) 150,000 potential sponsored kids 12% of kids have been admitted of refugees w/path to LPR (together w/ parents = 55,800).
20					
21					
22					
23					
24	Haitian Family Reunification Program	2014	6,000/yr		Accelerates arrival, but not LPR status.
25					
26					
27	International Entrepreneurs	August, 2016	6,000		2,940 estimated principal aliens + 3,000 family members.
28					

B) Estimation of Potential Population Growth in Counties of Interest to Plaintiffs, on an Action by Action Basis

Number of Individuals Potentially Remaining in the Settled Population Due to Certain Executive Actions: Counties and California					
Place	DACA	DAPA	Detainer	H-2A & H-2B	Enforcement Priorities
Larimer County, CO	NA	NA	84	61	NA
Denver County, CO	9,000	15,170	324	15	35,670
San Diego County, CA	38,000	70,380	456	669	180,090
Alameda County, CA	17,000	31,500	624	0	91,350
Los Angeles County, CA	180,000	339,200	3,636	3	922,200
Santa Barbara County, CA	9,000	15,050	588	1,362	37,410
Broward County, FL	14,000	17,640	312	488	73,080
Palm Beach	12,000	14,740	216	2,293	58,290

County, FL					
Martin County, FL	NA	NA	108	58	NA
California	561,000	1,026,460	NA	11,582	2,626,530
NA is Not Available					
Source	MPI	MPI	TRAC	DOL	MPI
Source Details:					
MPI - Migration Policy Institute Data Hub - DACA Data Tools and Unauthorized Immigrant Population Profiles					
TRAC - Syracuse University Transactional Records Clearinghouse - ICE Detainer Database					
DOL - Dept. of Labor Foreign Labor Certification Data Center					

60. These and other DHS Federal actions, which administer immigration and border control, have a significant effect on the size and growth of the population of the United States. Population growth itself is a significant environmental impact, as particularly noted by Congress in NEPA, and also as set forth in Dr. Cafaro's report, "The Environmental Impact of Immigration into the United States." *See* Ex. 4. As noted by Dr. Cafaro, population growth is a key

1 factor in determining a wide variety of environmental impacts. *Id.* For example,
2 immigration-driven population growth leads to urban sprawl and farmland loss,
3 habitat and biodiversity loss, an increase in worldwide levels of greenhouse gas
4 emissions, and an increase of water demands and water withdrawals from natural
5 systems. *See* Ex. 4 at 779.
6

7
8 61. Surveying the “purposes and needs” sections of several recent federal
9 and state agency EISs, Dr. Cafaro explains how new, environmentally harmful
10 projects are continually created around the country to accommodate immigration-
11 driven population growth. *See* Ex. 4 at 794. These recent EISs cite anticipated or
12 planned population growth as creating the need for a myriad of environmentally
13 harmful new infrastructure, e.g. transit projects, including the creation of light rail
14 systems, new airports, projects for road-widening and road construction, energy
15 projects, such as coal and natural gas development, new power plants, and
16 pipelines; as well as water supply projects, such as new dams and reservoirs. *See*
17 Ex. 4 at 794-799. There are also many other kinds of developments such as new
18 schools and housing projects, that, not generally located on federal land, are rarely
19 mentioned by EISs, but which nevertheless, are only needed because of population
20 growth. *See* Ex. 4 at 801.
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26 62. Population growth is responsible for one of the leading environmental
27 problems across the U.S.: urban sprawl, that is, new development on the fringes of
28

1 existing urban and suburban areas. *See* Ex. 4 at 802. Sprawl increases overall
2 energy and water consumption, air and water pollution, and decreases open space
3 and natural wildlife habitat, which endangers the survival of many species. *Id.*
4
5 From 1982 to 2010, a period of massive immigration, 41.4 million acres of
6 previously undeveloped urban land was built on to accommodate the U.S.'s
7 growing cities and towns--an area approximately equivalent to the state of Florida.
8
9 *Id.*

10
11 63. The future loss of the undeveloped land remaining in the United
12 States, due to unrelenting population growth, produces significant environmental
13 consequences. The ongoing loss of such open spaces, habitats, and wilderness to
14 unrelenting population growth is a source of anguish to those who love the
15 wilderness, including many of the instant Plaintiffs. The current President of the
16 United States recently acknowledged this great environmental loss in his speech
17 marking the designation and preservation from development of the
18
19 Papahānaumokuākea Marine National Monument in Hawaii last month. President
20
21 Obama stated, "I look forward to knowing that 20 years from now, 40 years from
22 now, 100 years from now, this is a place where people can still come to and see
23 what a place like this looks like when it's not overcrowded or destroyed by human
24 populations." White House Press Release, *Remarks by the President at the*
25
26 *Designation of the Papahānaumokuākea Marine National Monument*, The White
27
28

1 House: Office of Press Secretary (September 1, 2016),

2 [https://www.whitehouse.gov/the-press-office/2016/09/01/remarks-president-](https://www.whitehouse.gov/the-press-office/2016/09/01/remarks-president-designation-papahanaumokuakea-marine-national-monument)
3 [designation-papahanaumokuakea-marine-national-monument.](https://www.whitehouse.gov/the-press-office/2016/09/01/remarks-president-designation-papahanaumokuakea-marine-national-monument)
4

5 64. Population growth also threatens to accelerate biodiversity loss and
6 the extinction of animal and plant species. *See* Ex. 4 at 820. The United Nations’
7 Secretariat of the Convention on Biological Diversity estimates that humanity may
8 be causing the extinction of one out of every three species on Earth in the next one
9 to two hundred years. *Id.* Conservation biologists agree that the most important
10 “direct drivers” of biodiversity loss are: habitat loss, the impacts of alien species,
11 over-exploitation, pollution, and global climate change. *Id.* at 821. All five are
12 caused by increased human population and the increased human activities
13 associated with human population growth. *Id.*
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18 65. The carbon dioxide (“CO₂”) emissions produced in the United States
19 also are increasing because of immigration-driven population growth. Furthermore,
20 those foreign nationals that settle in the United States produce an estimated four
21 times more CO₂ in the United States than they would have in their countries of
22 origin. The estimated 637 tons of CO₂ produced annually by U.S. immigrants is
23 482 million tons more than they would have produced had they remained in their
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1 home countries.⁷ The impact of immigration to the United States on global
2 emissions is equal to approximately 5 percent of the increase in annual world-wide
3 CO2 emissions since 1980. That is 5 percent of total *global* CO2 emissions, not 5
4 percent of U.S. emissions. These numbers do not even include the CO2 impacts of
5 children born to United States immigrants. *See* Ex. 4. at 846.
6

7
8 66. Because a greater population uses more water, population growth also
9 results in a higher aggregate water use, putting increased pressure on water
10 systems, including rivers and underground aquifers. Water taken for human
11 consumption is necessarily removed from an ecosystem, leading to a host of
12 environmental impacts. *Id.* at 854-865. “When too much water is taken from these
13 ecosystems for consumptive use by human beings, there may not be enough water
14 left behind to perform these critical ecosystem services and functions.” *Id.* at 857.
15
16

17
18 67. The environmental impacts resulting from population-based demands
19 for water are most vividly illustrated in the state of California. The nation’s most
20 populous state also tops the nation in terms of water withdrawal. California has
21 also been experiencing a severe, multi-year drought. Governor Jerry Brown has
22 declared statewide mandatory water restrictions for the first time in California’s
23
24

25
26 ⁷ Reducing CO2 has been a focal point of the Obama administration’s
27 environmental initiatives. *See* Memorandum from Christina Goldfuss, Executive
28 Office of the President: Council on Environmental Quality (Aug. 1, 2016),
[https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_g
hg_guidance.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_g hg_guidance.pdf).

1 history, ordering towns and cities to reduce their water use by 25 percent. *Id.* at
2 866-872. This drought has led the state to overdraft its underground aquifers, with
3 potentially devastating environmental consequences. *Id.* at 867-868. Water quality
4 is also an issue. Numerous human activities can also cause water pollution. For
5 instance, the introduction of excess nitrogen and phosphorus fertilizers into
6 streams, rivers, and lakes encourage explosive growth of “algal blooms,”
7 ultimately leading to eutrophication and the destruction of these ecosystems and
8 those species that inhabit them. *Id.* at 859.

12 68. DHS’s administration of the nation’s immigration system, including
13 these specific discretionary actions, as detailed by Dr. Cafaro, increases the United
14 States’ population and thereby causes significant environmental impacts. Yet DHS
15 has never acknowledged these impacts as NEPA requires.

18 69. DHS’s administration of the nation’s immigration system, specifically
19 its administration of its immigration enforcement system, has also produced
20 significant environmental impacts on the Southwest border. Of the specific actions
21 under challenge in this case and listed *supra* in paragraphs 53, those that have had
22 an effect on border crossings include: Action 2; Action 7; Actions 10-13; Actions
23 15-19; Actions 21-27; and Action 33. Upon information and belief, these actions,
24 together with other enforcement actions presently unknown to Plaintiffs and the
25 general public, have led to and exacerbated environmental degradation along the
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1 Southwest border.

2 70. The massive numbers of people illegally crossing the Southwest
3 border have left a host of environmental impacts in their wake, such as the
4 destruction of native and at risks species and habitats by trampling over the native
5 vegetation; garbage dumping on a massive scale; water pollution; and setting fires,
6 many of which turn out of control, for the purposes of heat, cooking, or to distract
7 Border Patrol agents. These and other environmental degradations are detailed in
8 the affidavits of Fred Davis, Peggy Davis, Caren Cowen, John Ladd, and Ralph
9 Pope. *See* Ex. 6, Ex. 7, Ex. 16, Ex. 17, and Ex. 19. The scale, location, and form of
10 such environmental impacts necessarily depend on a number of factors, including,
11 but not limited to, the number of individuals illegally crossing, where they choose
12 to cross, and to some degree, what their goals are for crossing (for example, drug-
13 running versus finding work in the interior). Though DHS enforcement policies are
14 not the sole factor in all of these components of the illegal border-crossing
15 phenomenon, there is no doubt DHS policies significantly affect each one.

16 71. As stated by Plaintiffs' expert Jessica Vaughan in "Analysis of
17 Discretionary Agency Actions That Resulted in Cumulatively Significant
18 Environmental Impacts on the Southwest Border" (*see* Ex. B of Ex. 2 at 749),
19 "[h]istorical experience demonstrates that a real or even perceived change in
20 enforcement policies, both at the border and in the interior, can significantly affect
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the number of people attempting to cross the border illegally.” Ex. 2 at 750. Indeed, a Border Patrol intelligence report from 2014 based on interviews with migrants reveals that 95% stated that their “main reason” for coming was because they had heard they would receive a “permiso,” or, permission to stay. *Id.* at 751-752. The credible fear directive (Action 2, in ¶ 53 *supra*) in particular, quite clearly had a role in developing this belief, though other actions also played a role. For further explanation and analysis of DHS enforcement policy in general and how the agency’s specific actions, *supra*, have encouraged and exacerbated the phenomenon of mass illegal crossing along the Southwest border, *see* Ex. B of Ex. 2.

CAUSES OF ACTION

COUNT I

The DHS Instruction Manual Violates the APA and NEPA by Failing to Require NEPA Compliance with Respect to its Actions Relating to the Entry and Settlement of Foreign Nationals into the United States.

72. Plaintiffs reallege paragraphs 1-71 as if fully set forth herein.

73. CEQ regulations require each federal agency to adopt internal NEPA procedures to ensure NEPA compliance. 40 C.F.R. § 1507.3. Agency NEPA procedures shall comply with CEQ regulations. 40 C.F.R. § 1507.1. Further, such agency NEPA procedures shall include “specific criteria for an identification of

1 those typical classes of action” which either do require an Environmental Impact
2 Statement, do typically require an EA but not an EIS, or are categorically
3 excluded. 40 C.F.R. § 1507.3(b)(2).
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5 74. The entry and settlement of foreign nationals into the United States is
6 a major component of DHS’s statutory mission, comprising “principle programs”
7 pursuant to 40 C.F.R. § 1505.1(b) and “typical classes of action” pursuant to 40
8 C.F.R. § 1507.3(b)(2).
9

10
11 75. The entry and settlement of foreign nationals in the United States has
12 impacts on the human environment.
13

14 76. The DHS Instruction Manual fails to address the class of actions
15 concerning the entry and settlement of foreign nationals into the United States.
16

17 77. DHS’s failure to address these “typical classes of actions” and/or
18 “principle programs” in its Instruction Manual violates the CEQ NEPA regulations
19 40 C.F.R §§ 1500-1508.
20

21 78. The failure of DHS to incorporate NEPA compliance into its
22 Instruction Manual regarding those actions relating to the entry and settlement of
23 foreign nationals in the United States violates NEPA and the CEQ regulations, and
24 accordingly is arbitrary, capricious, an abuse of discretion and otherwise contrary
25 to law, in violation of the APA.
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COUNT II

DHS is Violating the APA and NEPA by Failing to Initiate NEPA review with respect to Thirty-Three Actions Relating to the Entry and Settlement of Foreign Nationals into the United States.

79. Plaintiffs reallege paragraphs 1-78 as if fully set forth herein.

80. The thirty-three actions set forth in ¶ 53 are federal actions subject to NEPA.

81. DHS violated and continues to violate NEPA and the APA by failing to initiate NEPA compliance with respect to those thirty-three DHS actions set forth in ¶ 53.

82. DHS's decision to proceed without initiating any NEPA compliance for these actions by preparing an EA for each action violates NEPA and the CEQ regulations, and accordingly is arbitrary, capricious, an abuse of discretion and otherwise contrary to law, in violation of the APA.

COUNT III

DHS is Violating the APA and NEPA by Failing to prepare a Programmatic EIS for its actions relating to the Entry and Settlement of Foreign Nationals into the United States.

83. Plaintiffs reallege paragraphs 1-82 as if fully set forth herein.

84. CEQ regulations provide that agency actions that are "related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." 40 C.F.R. § 1502.4(a). In such actions an EIS:

may be prepared, and are sometimes required, for broad federal actions such as the adoption of new agency programs or regulations. (§1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decision making.

40 C.F.R. § 1502.4(b). Such actions “have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.” 40 C.F.R. § 1502.4(c)(2).

85. The thirty-three actions set forth in ¶ 53 are federal actions subject to NEPA.

86. The thirty-three actions set forth in ¶ 53 have “relevant similarities” and a common “subject matter” in that they concern the entry and settlement of foreign nationals into the United States. Further, these actions have “common...impacts” (40 C.F.R. § 1502.4(c)(2)) under NEPA including, but not limited to, those population and border impacts including, but not limited to, those population and border impacts described in Plaintiffs’ affidavits (Ex. 6-19) and summarized in ¶¶ 26-42, as well as the expert report written by Steven Camarota, Ph.D. (Ex. 3), Phil Cafaro, Ph.D. (Ex. 4), and Jessica Vaughan (Ex. 2).

87. Because the thirty-three actions set forth in ¶ 53 address a common subject matter, “relevant similarities” and common impacts they are “related to

each other closely enough to be, in effect a single course of action” subject to the preparation of a Programmatic EIS. 40 C.F.R. § 1502.4(a)(2).

88. DHS’s failure to prepare a programmatic EIS for its thirty-three actions relating to entry and settlement of foreign nationals into the United States violates NEPA and the CEQ regulations and accordingly is arbitrary, capricious, an abuse of discretion and otherwise contrary to law, in violation of the APA.

COUNT IV

The Categorical Exclusion Issued by DHS on August 12, 2014 Violates NEPA and the APA.

89. Plaintiff realleges paragraphs 1-88 as if fully set forth herein.

90. DHS’s OPT Rule is a federal action subject to NEPA. 40 C.F.R. § 1508.18.

91. In issuing the OPT Rule, DHS stated:

This rule clearly fits within the Categorical Exclusion found in MD 023–01 Rev. 01, Appendix A, Table 1, number A3(a):

“Promulgation of rules . . . of a strictly administrative or procedural nature;” and A3(d): “Promulgation of rules... that interpret or amend an existing regulation without changing its environmental effect.” This rule is not part of a larger action. This rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

Ex. 1 at 611-613.

1 92. NEPA requires federal agencies to take a “hard look” at the
2 environmental impacts of their proposed actions. 42 U.S.C. § 4332(c).

3 93. The OPT Rule poses potentially significant environmental impacts,
4 including but not limited to population growth, particularly California, and all the
5 impacts that population growth induces, as examined in ¶¶ 60-67, *supra*.

6 94. NEPA analysis requires the examination of “indirect effects” which
7 includes “population density or growth rate, and related effects on air and water
8 and other natural systems, including ecosystems.” 40 C.F.R § 1508.8(b).

9 95. DHS failed to prepare an EIS documenting the action’s adverse
10 environmental impacts or an EA measuring the potential significance of such
11 impacts.

12 96. DHS unlawfully excluded this action from NEPA without taking a
13 “hard look” at the action’s environmental impacts.

14 97. DHS’s Categorical Exclusion for the OPT Rule is not supported by
15 substantial evidence in the Administrative Record.

16 98. DHS’s improper use of the Categorical Exclusion is contrary to NEPA
17 and is accordingly arbitrary, capricious, an abuse of discretion and otherwise
18 contrary to law, in violation of the APA.

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27 **COUNT V**
28

Failure to Take a “Hard Look” at the Environmental Impacts of the June 2, 2014 Action “Response to the Influx of Unaccompanied Alien Children” in Violation of NEPA and the APA

100. Plaintiffs reallege paragraphs 1-99 as if fully set forth herein.

101. NEPA requires federal agencies to take a “hard look” at the environmental impacts of their proposed actions, and to prepare an EIS if the adverse environmental impacts of a proposed federal action are potentially significant. 42 U.S.C. § 4332(c).

102. In preparing the EA for the June 2, 2014 “Response to the Influx of Unaccompanied Alien Children [,]” DHS failed to adequately consider the direct, indirect and cumulative impacts of the action upon the human environment, all in violation of 40 C.F.R. § 1508.9. These include, but are not limited to, those population and border impacts described in Plaintiffs’ affidavits (Ex. 6-19) and summarized in ¶¶ 26-42, as well as the expert reports written by Steven Camarota, Ph.D. (Ex. 3), Phil Cafaro, Ph.D. (Ex. 4), and Jessica Vaughan (Ex. 2).

103. DHS’s reliance upon an inadequate and incomplete EA, without full compliance with NEPA constitutes a violation of Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(c), as well as the implementing CEQ regulations set forth at 40 C.F.R. § 1500 *et seq.*, is unreasonable, arbitrary, an abuse of discretion and not in accordance with law under the APA.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request that this Court grant the following relief:

1) Enter a declaratory judgment that the failure of DHS to incorporate NEPA compliance into its Instruction Manual regarding those of its actions relating to the entry and settlement of foreign nationals in the United States violates NEPA and the APA; and

2) Enter a declaratory judgment that DHS has violated NEPA and the APA with respect to those thirty-three federal actions set forth in ¶ 53 for failing to initiate NEPA compliance; and

3) Enter a declaratory judgment that DHS has violated NEPA and the APA by failing to prepare a Programmatic EIS for its actions relating to entry and settlement of foreign nationals into the United States; and

4) Enter a declaratory judgment that the Categorical Exclusion issued by DHS on March 11, 2016 for its Final Rule entitled, “Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students,” 8 C.F.R. 214 and 274(a), violates NEPA and the APA; and

1 5) Enter a declaratory judgment that the EA and FONSI issued for the
2 June 2, 2014 Action “Response to the Influx of Unaccompanied Alien Children”
3 violates NEPA and the APA; and
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5 6) Enter an order requiring DHS to amend its Instruction Manual to fully
6 comply with NEPA with respect to those federal actions relating to entry and
7 settlement of foreign nationals into the United States; and
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9 7) Enter an order requiring DHS to fully comply with NEPA with
10 respect to those thirty-three federal actions set forth in this complaint; and
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12 8) Enter an order requiring DHS to fully comply with NEPA and prepare
13 a Programmatic EIS with respect to the thirty-three federal actions set forth in this
14 complaint and all of its federal actions relating to the entry and settlement of
15 foreign nationals into the United States; and
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18 9) Set aside the Categorical Exclusion issued by DHS for its Final Rule
19 entitled, “Improving and Expanding Training Opportunities for F-1 Nonimmigrant
20 Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students”
21 and remand to DHS for compliance with NEPA; and
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24 10) Set aside the EA and FONSI issued by DHS for the June 2, 2014
25 Action “Response to the Influx of Unaccompanied Alien Children” and remand to
26 DHS for compliance with NEPA; and
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1 11) Award Plaintiff reasonable attorney fees, costs and expenses incurred
2 in pursuing this action to the extent permitted by law; and

3
4 12) Provide such other relief as this Court deems just and proper.
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6
7 Dated: October 17, 2016

8 Respectfully submitted,
9

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28 **Pro Hac Vice* application forthcoming